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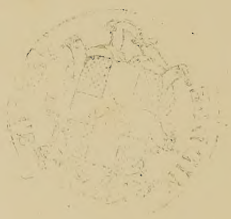

MIDDLE
TEMPLE

KEY AND ELPHINSTONE'S

COMPENDIUM

OF

PRECEDENTS IN CONVEYANCING.

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OF

PRECEDENTS

IN

CONVEYANCING.

FOURTH EDITION

BY

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IN TWO VOLUMES.

VOL. I.

LONDON:

SWEET & MAXWELL, LIMITED, 3, CHANCERY LANE,

Law Publishers.

MEREDITH, RAY, & LITTLER, MANCHESTER;
HODGES, FIGGIS, & CO. LD., AND E. PONSONBY, DUBLIN;
THACKER, SPINK, & CO., CALCUTTA;
C. F. MAXWELL, MELBOURNE & SYDNEY.

1894.

LONDON:
BRADBURY, AGNEW, & CO. LD., PRINTERS, WHITEFRIARS.

PREFACE.

The amount of additional matter in the present edition of this work is very considerable, chiefly in the notes, very many of which have been wholly or in part rewritten. Apart from the new matter, in which many suggestions and improvements resulting from practical experience are incorporated, the mere revision and bringing up to date of the old matter has entailed the consideration and digesting of a large mass of case and statute law. It is hoped that the labour and care involved in this, which has proved exceedingly heavy, and accounts for the long time that has elapsed since the last edition went out of print, may be found to bear fruit in the increased utility of the book. Attention is called to the Corrigenda, with especial reference to the Acts of 1893, passed after the book was partially printed. Best acknowledgments are due to several members of the profession, especially Sir H. W. Elphinstone and Mr. E. P. Wolstenholme, for useful suggestions or the loan of forms, and to Mr. W. Crichton Slagg, of the Middle Temple, for valuable assistance in passing the book through the press.

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Page 2 Note, middle.
" 98 Note.
" 200 Note.
" 440 Middle.
" 535 Note (*f*).
" 538 Note (*a*).
" 547 Note.
" 578 End of note (*b*).
" 649 End of note (*c*).
" 659 Note (*d*).
" 727 Note.
" 773 Line 4 from end.
" 932 Note (*d*).

As to the contracts of Married Women, see now the Act of 1893, add. to p. 541.

" 24 Note. *After* "*Re Vince*," *add* a reference to *Re Hildesheim*, [1893] 2 Q. B. 357.

.. 76 As to the power of the appointor (where the power is special) to supersede the trustees of the settlement creating the power, and to substitute other trustees, see *Re Tyssen*, [1894] 1 Ch. 56, and the cases there referred to.

" 79 Note (*f*).
" 82 Note (*d*).

The references here and elsewhere in the notes or text, to succession and other duties, must be taken subject to any alterations which may be made by the pending re-arrangement of the death duties.

" 81 Note (*b*). Refer to *Re Buckley*, [1893] W. N. 95.

" 91 Note (*b*). *Re Jeffery* has been overruled by *Re Holford*, [1894] W. N. 94.

.. 111 Line 10. The statutory power is not exerciseable by a surviving trustee by will, *Re Parker*, [1894] 1 Ch. 661.

" 111—118 Preliminary note. The sections of the Conveyancing Acts, 1881, 1882, and 1892, referred to in this note (except s. 30 of the Act of 1881, referred to in p. 117), have been repealed and re-enacted in substance by the Trustee Act, 1893, 56 & 57 Vict. c. 53, passed since this volume was in print; the necessary substitutions should therefore be made, namely:—*For* "s. 31 of the Act of 1881, s. 5 of that of 1882, and s. 6 of that of 1892," *substitute* "s. 10 of the Act of 1893"; *for* "s. 32 of the Act of

1881," *substitute* "s. 11 of that of 1893"; *for* "s. 33 of the Act of 1881," *substitute* "s. 37 of that of 1893"; and *for* "s. 34 of the Act of 1881," *substitute* "s. 12 of that of 1893." Other enactments referred to in the same note have also been repealed and re-enacted by the Trustee Act, 1893, as follows:—*For* "s. 147 of the Bankruptcy Act, 1883," (referred to in p. 112), *substitute* "s. 25 (1) of that of 1893"; *for* "s. 140 of the Lunacy Act, 1890," (referred to in p. 112), *substitute* "s. 40 of that of 1893"; *for* "the Trustee Act, 1850, s. 32," (referred to in pp. 113, 114, and 115), *substitute* "s. 25 (1) of that of 1893"; *for* "s. 34 of the same Act," (referred to in pp. 114 and 117), *substitute* "s. 26 of that of 1893"; and *for* "s. 35 of the same Act," (referred to in p. 117), *substitute* "s. 35 (1) of that of 1893"; *for* "s. 9 of the Trustee Act, 1852," (referred to in p. 113), *substitute* "s. 25 (1) of that of 1893"; *for* "s. 17 of the Settled Land Act, 1890," (referred to in p. 116), *substitute* "s. 47 of that of 1893"; and *for* "s. 6 of the Vendor and Purchaser Act, 1874," (referred to in p. 118), *substitute* "s. 16 of that of 1893"; see also the rules of 5th Dec., 1893, under the Act of 1893.

Page 112 *After* "*Re Ambler*," *add* a reference to *Nicholson* v. *Field*, [1893] 2 Ch. 511.

Substitute in all these places references to the Trustee Act 1893, for the references to the Conv. Act, 1881; see add. to pp. 111—118. It would be better in all cases in which the appointment is made under the statutory power (see pp. 119, 143, 145 and 152) to refer to "the statute in that behalf" in general terms, so as to avoid any question as to which of the successive Acts (of 1860, 1881, and 1893) is applicable to the particular case, having regard to the date of the creation of the trust (see p. 112).

„ 119 Form II. and note (*c*).
„ 120 Note (*a*).
„ 136 Line 3 from end, and in heading of precedent.
„ 137 Note (*b*).
„ 139 & 140 Note.
„ 143 Text.
„ 144 Notes (*a*) and (*d*).
„ 145 Text and note.
„ 146 Heading and note.
„ 150 Do.
„ 152 Text.
„ 153 Heading and note (*a*).

„ 134 End of note.
„ 296 Note (*d*).
„ 463 Note (*g*).
„ 464 Note (*a*).
„ 516 Note (*a*).
„ 558 Note (*b*).
„ 561 Note (*c*).
„ 565 Note (*a*).
„ 649 Note (*d*).
„ 651 Note (*d*).
„ 678 End of note.
„ 724 Precedent VI. and note.

See add. to p. 79.

Page 147 Note. S. 140 of the Lunacy Act, 1890, has been repealed and replaced by s. 40 of the Trustee Act, 1893.

„ 150 Line 11. *Add* a reference to *Urch* v. *Walker*, 3 M. & C. 702.

„ 158 *After* "*Meakin* v. *Morris*," *add* "*Corn* v. *Matthews*, [1893] 1 Q. B. 310."

„ 159 Middle. *For* "50 & 51 Vict. c. 65," *read* "51 & 52 Vict. c. 65."

„ 169 End. S. 37 of the Conv. Act, 1881, has been repealed by the Trustee Act, 1893, and re-enacted by s. 21.

„ 245 Note. *Maxim-Nordenfelt, &c., Co.* v. *Nordenfelt*, reported [1893] 1 Ch. 630.

„ 253 Line 16. *Add* reference to *Re Pursell*, [1893] W. N. 152.

„ 256 & 257. Several of the enactments referred to in these pages have been repealed and re-enacted by the Trustee Act, 1893, namely:—S. 35 of the Conv. Act, 1881 (re-enacted by s. 13, so as to apply to executors and administrators, see s. 50); s. 3 of the Trustee Act, 1888 (re-enacted by s. 14); s. 3 of the Vendor and Purchaser Act, 1874 (re-enacted by s. 15); and s. 6 of the same Act (re-enacted by s. 16). As to the Married Women's Property Act, see add. to p. 541.

„ 258 Note (*b*). *After* "*Edgell* v. *Day*," *add* "*Ellis* v. *Goulton*, [1893] 1 Q. B. 350."

„ 261 Note (*g*). } *For* "The Trustee Act, 1888, s. 3," *substitute* "The
„ 267 Note (*e*). } Trustee Act, 1893, s. 14."

„ 270 Note (*a*). *After* "*Reeve* v. *Berridge*," *add* "*Midgley* v. *Smith*, [1893] W. N. 120."

„ 276 Note (*b*). S. 4 of the Trustee Act, 1888, has been repealed by the Trustee Act, 1893, and re-enacted by s. 8.

„ 280 Note (*c*). See also *Re Brall*, [1893] 2 Q. B. 381, and the Voluntary Conveyances Act, 1893, 56 & 57 Vict. c. 21.

„ 284 Note (*b*). *Add* "*Williams* v. *Spargo*, [1893] W. N. 100."

„ 292 Note (*c*). *Add* "*Mostyn* v. *Mostyn*, [1893] 3 Ch. 376."

„ 297 Note (*d*). As to a general power of attorney given by a vendor trustee, see *Re Hetling*, [1893] 3 Ch. 269.

„ 310 Note (*b*). The 25 & 26 Vict. c. 108 has been repealed by the Trustee Act, 1893, and re-enacted (as to trustees) by s. 44.

„ 317 Form b. (9). An advertisement hoarding held not to be a "building," *Foster* v. *Fraser*, [1893] 3 Ch. 158.

„ 329 Note. "*Re Wythes*," reported [1893] 2 Ch. 369.

„ 349 Note, line 14 from end. *For* "MISCELLANEOUS," *substitute* "NOTICES."

„ 350 Note (*a*), line 3. *For* "to" *read* "at."

„ 360 Note (*a*). *Add* "*Ruabon, &c. Co.* v. *Great Western Railway Co.*, [1893] 1 Ch. 427."

„ 378 Note (*a*), line 2. *For* "Dig.," *read* "De G." See add. to p. 79.

„ 380 Middle. *For* "XI" *read* "IX."

„ 395 Top. For "IXXXX" *read* "XXXIX."

Page 413 Middle, and } S. 2 of the Trustee Act, 1888, has been repealed and
„ 472 Note (*k*). } replaced by s. 17 of the Trustee Act, 1893.

„ 413 End of principal paragraph. *Add* a reference to *Re Hetling*, [1893] 3 Ch. 269.

„ 417 Note (*c*). *Add* "*Pryor* v. *Petre*, [1894] 2 Ch. 11."

„ 432 Note (*c*). That words of limitation ("heirs" or "in fee simple") are necessary in conveyancing of equitable as well as legal estates to pass the fee. See *Re Whiston*, [1894] 1 Ch. 661.

„ 439 Line 9. The fact that a defect of title appears on the face of the conveyance or is otherwise known to the purchaser does not alter the effect of the covenants for title; *Page* v. *Midland Railway Co.*, [1894] 1 Ch. 11.

„ 456 Note, second paragraph. *Add* reference to *Re Pursell*, [1893] W. N. 152.

„ 463 Note (*f*). *Add* a reference to *Rouse* v. *Bradford Banking Company*, [1894] 2 Ch. 32.

„ 464 Note (*g*). On the sale of land subject to beneficial leases the duty payable on the determination of the leases in respect of the increased value was held to be payable by the vendor; *Re Kidd*, [1893] 1 Ch. 695.

„ 470 Note (*e*), and } *For* "sub-s." *read* "s."
„ 472 Note (*k*). }

„ 486 Note (*e*). *For* "Davie" *read* "David."

„ 486 Text, as to the insertion of qualifying words in a conveyance by a mortgagee, see *Mostyn* v. *Mostyn*, [1893] 3 Ch. 376, where the sale was under the Court.

„ 493 Note (*d*). The act 25 & 26 Vict. c. 108 (The Confirmation of Sales Act), s. 2, which empowered trustees, "*or any other person authorized to dispose of land by way of sale*," with the sanction of the Court to sell the land without the minerals, or *vice versa*, was held to include mortgagees (*Re Beaumont*, 12 Eq. 86; *Re Wilkinson*, 13 Eq. 634); but that act has been wholly repealed by the Trustee Act, 1893, and re-enacted (by s. 44) without the words in italics, so as to give rise to a serious doubt as to whether mortgagees still possess the power in question. See Rudall and Greig on the latter Act, p. 137.

„ 496 Note (*c*), line 7. *For* "Conv. Act, 1881, s. 34," *substitute* "Trustee Act, 1893, s. 12."

„ 502 Line 16. *Re Ailesbury*, reported [1893] 2 Ch. 345.

„ 503 First paragraph. As to a settlement of two estates by the same instrument to different uses, see *Re Freme*, [1894] 1 Ch. 1.

„ 504 Line 13. As to a base fee, see *Re Morshead*, [1893] W. N. 180.

„ 507 Two-thirds down. *For* "Trustee Act, 1888, s. 2," *substitute* "Trustee Act, 1893, s. 17."

„ 509 Line 13 from end. *Add* "but s. 12 of the Act of 1890 does not apply to leases."

Page 509 End of second paragraph. *For* "the Act of 1890, s. 17," *substitute* "the Trustee Act, 1893, s. 47."

,, 512 In connection with *Re Harding*, see *Re Bagot*, [1893] W. N. 179; *Re Houghton*, [1894] W. N. 20.

,, 523 Note (*c*), line 6. *For* "the rule of Court of November, 1888, and the Trust Investment Act, 1889," *substitute* "the Trustee Act, 1893, s. 1, and R. S. C. order XXII, rule 17."

,, 529 The mere conveyance of an equity of redemption does not of course create any personal liability by the purchaser for payment of the mortgage debt; nor will the subsequent payment by him of the interest have any such effect; *Re Errington*, [1894] 1 Q. B. 11.

,, 536 End of note (*f*). See *Ward* v. *Duncombe*, [1893] A. C. 369.

,, 541 Note. See now as to the contracts of married women, the Married Women's Property Act, 1893, 56 & 57 Vict. c. 63 (passed since this volume was in print), which (by s. 4) has repealed sub-ss. 3 and 4 of s. 1 of the Act of 1882, and has done away with the restrictions in *Re Shakespear* and other cases referred to in this note by enacting (s. 1) that the contracts of a married woman shall bind her separate property, whether she is possessed of any at the time or not, including after-acquired property, and including also (which is an extension of the original Act) all property to which she may thereafter become entitled while discovert, except any separate property which she is, at the date of the contract or thereafter, restrained from anticipating. As to power of appointment, see *Re Ann*, [1894] 1 Ch. 549.

,, 541 Note, line 3, s. 6 of the Vendor and Purchaser Act, 1874, has been repealed by the Trustee Act, 1893, and re-enacted by s. 16.

,, 544 Note, end, and
,, 553 Note (*c*), line 6. } *Re Ailesbury*, reported [1893] 2 Ch. 345.

,, 552 Precedent XXXIV. That an incumbrance by a tenant for life on his life estate does not extinguish his power of consenting to a sale, but renders the concurrence of the incumbrancer necessary, see *Re Bedingfield*, [1893] 2 Ch. 332, and the cases there cited.

,, 562 Note (*c*), line 2. See now the Voluntary Conveyances Act, 1893, 56 & 57 Vict. c. 21, altering the law as to this.

,, 563 Note (*c*). In connection with *Re Briggs*, *add* a reference to *Re Brall*, [1893] 2 Q. B. 381, where it was held that the word "void" in s. 47 of the Bankruptcy Act, 1883, must be construed as meaning "voidable," and that a *bonâ fide* purchaser from the trustees of a voluntary settlement had a good title as against the settlor's trustee in bankruptcy.

,, 580 Note, line 2, *dele* "whether." Upon the question of perpetuity adverted to in this note, see *Re Daveron*, [1893] 3 Ch. 421.

,, 594 Note (*a*). *For* "the Trustee Act, 1850, &c.," *substitute* "the Trustee Act, 1893."

,, 595 Note (*b*). The Trustee Extension Act, 1852, s. 1, has been repealed by the Trustee Act, 1893, and re-enacted by s. 32.

Page 625 Note (*e*). As to the exemptions from the Charitable Trusts Acts, under the Act of 1853, s. 62, see *Corporation of Sons of the Clergy* v. *Sutton*, 27 Beav. 651. The same and *Skinner*, [1893] 1 Ch. 178, and the *St. John Street, &c., Chapel, Chester*, [1893] 2 Ch. 618.

„ 635 Note (*c*). *Before* "Dav." *add* "2."

„ 668 Note. In *Ramsay* v. *Margrett*, [1894] 2 Q. B. 18, the unity of person of husband and wife was held to be abrogated by the Married Women's Property Act, 1882, so that a husband can at law transfer furniture direct to his wife, and in *Re Marlborough*, [1894] 2 Ch. 133, the validity of an assignment in 1890 of leaseholds by wife to husband appears to have been assumed.

„ 678 Note, line 6 from end. The Trustee Act, 1888, s. 6, has been repealed by the Trustee Act, 1893, and re-enacted by s. 45.

„ 679 Note. *For* "the Trustee Act, 1888, s. 2," *substitute* "the Trustee Act, 1893, s. 17."

„ 690 Note (*b*). *After* "*Doe* v. *Earl of Scarborough*" *add* "*Milbank* v. *Vane*, [1893] 3 Ch. 79."

„ 691 Note. *Re Ailesbury*, reported [1893] 2 Ch. 345.

„ 728 Note, line 11. This is now altered by the Married Women's Property Act, 1893, s. 4, which makes a wife's contracts enforceable against any property to which she may be entitled after the husband's death, subject to any restraint on anticipation. See add. to p. 541.

„ 728 Note, line 6 from end, and } *For* "the Trustee Act, 1888, &c., s. 6,"
„ 729 Note. } *substitute* "The Trustee Act, 1893, s. 45."

„ 741 Clause II. As to rent payable in advance, and the right to distrain, see *London, &c., Loan, &c., Co.* v. *London and North Western Railway Co.*, [1893] 2 Q. B. 49.

„ 759 Note (*b*). *Add* a reference to *Haynes* v. *King*, [1893] 3 Ch. 439.

„ 779 Clause 11. As to the liability of the landlord to keep the staircase in repair, see *Miller* v. *Hancock*, [1893] 2 Q. B. 177

„ 781 Note. *Add* "*Midgley* v. *Smith*, [1893] W. N. 120."

„ 786 Note. As to a lease of a house and furniture at one rent, where the house is in settlement, see the argument in *Sutherland* v. *Sutherland*, [1893] 3 Ch. 182—3.

„ 928 Note (*e*). As to a lease by a tenant for life to his wife, see *Sutherland* v. *Sutherland*, [1893] 3 Ch. 169.

„ 929 Note, line 17 from end, and } *Sutherland* v. *Sutherland*, reported
„ 932 Note } [1893] 3 Ch. 169.

„ 949 Note, line 11. *For* "Sol. G." *read* "Sol. J."

AGREEMENTS (*a*).

I.

AGREEMENT *with a* BUILDER *or* CONTRACTOR *for building a* HOUSE *or executing other* WORKS. *With variations.*

AGRMT [*or*, articles, *or*, memdum, of agrmt] made the —— day of —— betn A. of, &c. (hinafter called the contractor) of the one pt, & B. of, &c. (hinafter called the owner) of the other pt. [WHBY IT IS AGRD as follows]: (*b*) Parties

(*a*) For agreements for sale and enfranchisement, see CONTRACTS FOR SALE; for agreements for Arbitration, Exchange, Lease, Mortgage, Partition, Partnership, and Separation, see those respective headings; for agreements as to patents, see PATENTS; see also MISCELLANEOUS PRECEDENTS. As to the Stamps on Agreements, see the Stamp Act, 1891, 54 & 55 Vict. c. 39, s. 23, and the Schedule, heads AGREEMENT, GENERAL EXEMPTIONS FROM ALL STAMP DUTIES; and as to Agreements under Seal, the heads BOND and COVENANT.

(*b*) The following are various forms for commencing the operative part of an agreement, though in ordinary cases it is not necessary to insert any formal commencement where there are no recitals:— Forms of commencement of agreements.

1. "It is hby [mutually] agrd [by & betn the sd pties hto] as follows:"—2. Where there are several parties, and each is to be expressed to be bound to the performance of his own acts only, "each & every of them, the sd A., B., C., & D., [*or*, the sd respive pties hto] so far as relates to his own acts & defaults only [*or*, so far as the agrmts hinafter contd are or ought to be pformed by him, his hrs, exs, ads, or assns, but not further or orwise] doth hby [in conson of the agrmts Short form. Fuller form.

Agreement to execute works.

1. The contractor shl at his own cost [take down & remove the house & bldgs, situate & being No. ——, in hinafter contd on the pt of the others or other of them] agree with the others or other of them as follows: "—3. Where there are several parties of the one part who are to be jointly and severally bound and entitled to the benefits of the agreement, and one party of the other part, "the sd A., B., & C., do hby jtly & sevlly agree with the sd D., & the sd D. doth hby agree with the sd A., B., & C., jtly & sevlly (so far as the agrmts hinafter contd are or ought to be pformed by the sd pties resply or their respive hrs, exs, ads, or assns) as follows:"—4. Where one of the parties is a firm, "the sd A. (so far, &c.) doth hby agree with the sd B. & Co. & with the sevl ptners in their firm jtly & sevlly, and the sd B. & Co. (so far, &c.) do hby for themselves & the sevl ptners in their firm jtly & sevlly agree with the sd A. as follows:" Under an agreement in either of the two last forms, all or any of the parties jointly or severally liable could be sued in the same action: see R. S. C., 1883, Order XVI. rr. 4 and 6.—5. Where a married woman is a contracting party, it is desirable (especially having regard to the manner in which the beneficial effect of the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, as to the contracts of married women, has been narrowed down by the decisions on the Act, see the notes, *infra*, on this subject) that the intention to bind her separate estate (including property over which she may have a power of appointment) should be expressed, as in the following form:—"it is hby mutually agrd betn & by the sd A. & B., & as to the sd B. to the intent to chge & bind all [her share este & intt under an indre &c., in &c., *or as the case may be*, & all other] real & psonal este & ppty psnt or future wch she may have power so to chge or bind, as follows:"

Where several parties are bound jointly and severally.

In case of a firm.

In case of a married woman.

Frame of covenants under seal.

In the case of agreements under seal, it is sufficient (or to speak more correctly, customary, there being of course no magic in the word) to substitute the word "covenant" for "agree." See also the forms under "Covenant." It is now wholly unnecessary that the covenant should be expressed to bind the "hrs, exs, & ads," of the covenantor according to the form formerly in use in the case of instruments under seal (though it was practically of little use even as regards the word "hrs"); see the Conv. Act, 1881, 44 & 45 Vict. c. 41, s. 59; and the words in question are omitted in the commencement of covenants or other obligations in this work. But it must be remembered that the

—— street, &c., &] erect, build, & completely finish in a good, substantial, & workmanlike mner [& with the best materials of their sevl kinds (*c*)], a house & other bldgs upon a piece of ground belongg to the owner, situate &c., & contg &c., *or*, "upon the site of the sd existg house & bldgs" accordg to the plans, elevons, & sectns, & in accordce with the specificon of works & drawgs wch have been resply signed by the contractor & by C. the surveyor of the owner, *or*, "shl, at his own cost, exte & completely finish &c., the sevl works mentd in the specificon hrunto annexed, accdg to the plans &c.," & the contractor hby admits that the sd specificon, plans, & drawgs are sufft for their intd ppose, & that the works can be successfully exted in ac-

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Act does not obviate the necessity of expressly binding the "assns" of the covenantor where this was necessary before the Act, in order to make the burden of the covenant run with the land (where the law so permits), and in such cases it is better to insert all the words "hrs, exs, ads, & assns." See *infra* "CONDITIONS OF SALE," "CONVEYANCES ON SALE," and "LEASES."

Devolution of benefit of contract.

The benefit also of a contract, whether under seal or not, will (unless such construction is excluded by the terms or nature of the contract) devolve, in the case of leaseholds (including estates *pur autre vie* devolving on the personal representatives) and personalty, on the personal representatives, or in the case of real estates of inheritance, or *pur autre vie* devolving on the heir, on the heirs, as well as the assigns of the parties, without any express mention of their "hrs, exs, ads, & assns," (see as to covenants relating to land, the Conv. Act, 1881, s. 58); and the benefit of a contract with several persons jointly will devolve on the survivors, &c., see the same Act, s. 60.

As to annexing agreement to prior agreement.

Where an agreement varies the terms of, or is otherwise connected with, a previous instrument or several instruments, it may be convenient in order to avoid reciting the prior instrument or instruments to describe the later one as supplemental, or intended to be read as annexed thereto (in lieu of being endorsed). The provision in the Conv. Act, 1881, s. 53, as to this applies only to deeds, but this expedient can of course be had recourse to in all cases independently of that enactment, as it needs no statutory authority. See the note, *infra*, under the head "DEEDS" as to making instruments supplemental to prior instruments.

(*c*) Where the materials are to be supplied by the owner, substitute: "but with materials to be supplied by the owner as hinafter mentd;" and add the provisions in notes (*b*), (*c*), (*d*), pp. 4 and 5.

cordce thwith, witht any addl or extra work other than such work as is necessarily implied thrin, or to be inferred thfrom upon a fair & liberal constron.

Works to be executed to satisfaction of surveyor.

2. The sd works shl be exted under the diron & to the satisfon in all respts of the sd C. or other the surveyor for the time being of the owner, who shl have been apptd to act for him for the ppose of this contract by some writg under his hand delivered to the contractor at his place of business (hereinafter refd to as the surveyor).

Completion.

3. On the signg of this contract complete & full posson of the sd premes, so far as may be necy for the exon of the sd works, but not so as to constitute a tenancy, shl be given to the contractor, who shl forthwith commce the sd works & actively prosecute the same, & the sd works shl in all respts be completed [& the sd house & bldgs made fit for habiton & use] within —— calr months from the time when such posson shl be given: Provd that in case any delay shl arise from fire, tempest, frost, or other inevitable cause, or accident, or from any strike (*a*) or lock-out in the bldg trade, or by the default of the owner in payg in due course any moys due & payable to the contractor under this contract (*b*), then such further time shl be allowed for the complon thof, as the surveyor shl in writg certify to be reasble.

Delay.

Materials provided by contractor.

4. All materials to be used in the works, although the same may not be parly mentd in the specificon (save as orwise provd by the sd specificon, & save as may be hrafter orwise required by the owner or the surveyor, by any writg under his hand), shl be supplied & furnished by the contractor (*c*).

(*a*) As to the meaning of the word "strike," see *Stephens* v. *Harris*, 56 L. J., Q. B. D. 516.

(*b*) "Or in supplying the materials for the sd works after notice in that behalf shl have been given by the contractor as hinafter mentd."

Materials provided by owner.

(*c*) In the case mentioned in note (*c*), p. 3, substitute for the provision in the text the following: "All the old materials of the existg

5. The contractor shl, on the complon of the sd works, at his own expse, remove & clear away all scaffoldg, fencg, unused materials, & rubbish from the same, & leave the whole of the works & premes in a clean & pper state. Clearance of scaffolding &c.

6. The owner shl pay to the contractor the sum of £——-, wch shl include the cost of labour, & of all materials (*e*), plant, & other things required for the pposes of the works, & of the convce or transport & removal thof to or from the works, in mner followg, that is to say, the sum of £——, upon the prodon to the owner of the certfe of the surveyor that work to the value of £—— has been duly exted to his satisfon by the contractor, the further sum of £—— upon the prodon of the like certfe that work to the value of £—— Payment (*d*). Alternative provisions.

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bldgs wch shl not be fit to be used in or about the sd works shl forthwith be removed by the contractor at his expse, & shl when so removed become his ppty, & all new materials to be used in or about the sd works shl be provd by the owner, & shl from time to time be delivered by him at his own expse at the place where the sd works are to be exted, as the sd materials shl be required by the contractor, reasble notice in that behalf being given by him to the owner: But all scaffoldg, tackle, tools, machy, plant, & other things requisite or pper for the sd works, except the materials used thrin, shl be provd by & at the expse of the contractor: The sd works shl be exted with the sd old materials so far as the same shl be fit for the ppose, & with the new materials to be supplied as afsd by the owner to the contractor, who shl be acctable for the same, & shl be chged for all materials wch shl be certified by the surveyor to be fit for use, but not to have been used in or about the sd works, a reasble allowce being made for waste, & the amt so to be chged shall also be fixed by the surveyor, & shl be pd by the contractor to the owner."

(*d*) As to the liability of the builder to pay the charges of the quantity surveyor, see *North* v. *Bassett*, [1892] 1 Q. B. 333.

(*e*) "Except such as are hby agrd to be supplied by the owner."

has been so exted (*a*), & the remr of the sd sum of £—— upon the prodon to the owner of the certfe of the surveyor that the sd works have been in all respts completed [& the sd house & bldgs made fit for habitation & use] in accordce with this contract, & to his satisfon, [*or*, "in sums amtg to £90 p.c. on the value of the works as the same shl proceed, & not being less than £—— at each paymt, wch percentage shl be ascertained by the sd surveyor, & shl be pd upon his certfe of the same being produced to the owner, & the remr of the sd sum of £——, *&c., as bfe;*" *or*, "THE sum to be pd by the owner to the contractor for the sd works shl be ascertained accdg to the rates specified in the schdle of prices annexed to the sd specificon, so far as the prices are there specified, wch prices shl include the cost of labour *&c., as above* (save as orwise provd by the sd specificon or schdle of prices), & the paymt for any work not included in the sd schdle of prices shl be fixed by the surveyor: WEEKLY paymts on acct shl be made by the owner to the contractor upon the certfes of the surveyor of the contract value of the work exted, subjt to a dedon of 10 p.c. upon such value, wch shl be retained by the owner until the complon of the work, & shl be pd to the contractor upon the certfe of the surveyor of the works havg been completed, & of the balce remaing due to the contractor."]

Withholding certificate (*b*).

7. THE surveyor shl not give his certfe in respt of any work wch is in any respt defective or not accdg to contract or orwise not done to his reasble satisfon, or while the

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Where payment of last instalment is to be delayed.

(*a*) Occasionally the payment of the last instalment is delayed for a year, so as to allow of defects being discovered: in this case say, "And the remr of the sd sum of £—— one yr after the prodon to the owner of the certfe," *&c., as in text.* "In case the surveyor shl within the sd yr certify that any work [or materials] are defective, the same shl forthwith be made good by the contractor at his own expse, or on his default by the owner at the expse of the contractor."

(*b*) As to the power of the Court on the bankruptcy of the contractor to order a certificate to be given, see *Exp. Gray*, 58 L. J. Q. B. D. 5.

contractor is not using due diligce in the prosecon of the works or orwise makg default in the pformce of this contract.

Deviations and extra work.

8. The owner or the surveyor may at any time durg the progress of the works by order in writg under his hand, make or cause to be made any alterons in the sd origl specificon & plans by way of addon or omission, or orwise deviatg thfrom; & the sd works shl be exted accdg to the sd alterons or devions under the diron & to the satisfon of the surveyor in the same mner as if the same had been included in the sd origl specificon & plans; & any work or materials wch shl so be ordered not to be done or used shl be omitted or shall not be used by the contractor.

Payment for deviations and extra work (*c*).

9. All addons and dedons to be made to or from the amt of the contract price in respt of any such alteron or devion from the sd specificon or plans as afsd shl be [ascertained accdg to the rates specified in the schdle of prices annexed to the sd specificon, & in case the rates are not thrin specified, shl be] fixed by the surveyor. And the diffce of expse occasioned by any such alteron or devion shl be added or deducted (as the case may be), to or from the contract price. But no paymt or allowce whatever shl be made to the contractor for any extra work or materials done or used by him witht a previous order or authority in writg from the owner [or the surveyor]; & any alteron or devion ordered or authorised as afsd shl not in anywise alter the total contract price to be pd to the contractor, except so far as the same shl alter the amt of labour or the value of the materials wch may be required to be used in or about the works, nor shl alter the mode in wch the contract price is to be pd, or in wch the value of the work done is to be ascertained with a view to the paymt thof. And the contractor shl not by reason of any such addon to or alteron in the works as afsd be allowed any further time for completg the same, except such further time, if any, as the surveyor shl in writg certify to be reasble.

(*c*) As to this clause see *Tharsis Sulphur & Copper Company* v. *McElroy* 3 App. Ca. 1040; *Richards* v. *May*, 10 Q. B. D. 400.

Power to deduct money owing by contractor (*a*).

10. The owner shl be entled to deduct any moys wch the contractor shl be liable to pay to the owner, under this contract or orwise, from any sum wch may become payable to the contractor hrunder: And the surveyor in makg his certfes as afsd shl have regard to any sums so chgeable agst the contractor: Provd always, that this provon shl not affect any other remedy by action at law, or orwise, to wch the owner may be entled for the recovery of any such moys.

Penalties for delay (*b*).

11. In case the sd works shl not in all respts be completed [& the sd house & bldgs made fit for habiton & use] on or bfe the sd —— day of ——, or within such extended time as shl be allowed for that ppose, as hinbfe mentd, & the surveyor shl certify in writg the fact of such non-complon, then the contractor shl pay to the owner, as liquidated & ascertained damages for such default, & not as a penalty, the sum of £—— for every subseqt week, & so in proportion for any pt of a week, until the complon of the sd works, such complon to be certified in writg by the surveyor.

Materials, &c., to be property of employer (*c*).

12. All materials [scaffoldg, tools, implemts, machy, plant, & effects] wch may from time to time durg the progress of the works be in, upon, or about the premes for use

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(*a*) As to the right of set-off in the absence of express contract, see *Young* v. *Kitchin*, 3 Ex. D. 127.

(*b*) That this provision is effectual, see *Law* v. *Local Board of Redditch*, [1892] 1 Q. B. 127.

As to bankruptcy or default of contractor.

(*c*) Although a provision for forfeiture of the building materials to the owner on the bankruptcy of the contractor would be void as a violation of the policy of the bankruptcy law within the principle of *Higinbotham* v. *Holme* (19 Ves. 88), that a man cannot validly contract that his property shall go over on his bankruptcy so as to be taken away from his creditors (*Exp. Jay*, 14 Ch. D. 19; *Exp. Barter*, 26 Ch. D. 510), the clause in the text, having no reference to bankruptcy, is free from this objection (*Brown* v. *Bateman*, L. R. 2 C. P. 272; *Exp. Dickin*, 4 Ch. D. 524); and is not touched by the Bills of Sale Acts (*Reeves* v. *Barlow*, 11 Q. B. D. 610; 12 Q. B. D. 436; see 36 S. J. 751); and is preferable to a mere licence to seize the materials on the default of the builder, although this would prevail against the trustee in bankruptcy, and would not be within the Bills of Sale Acts (*Exp. Newitt*, 16 Ch. D. 522). The clause is sometimes extended to the contractor's plant, but this being contrary to the intention of the contract is wrong; and clause 14 should be relied on as to this.

in the sd works, shl be deemed to be the absolute ppty of the owner; but the contractor shl nevs be solely responsible for the loss or destron thof, & for all damage wch may happen thto by fire, tempest, or any other cause whatsr, & the contractor shl likewise be liable to make good all damage wch may happen to the sd works from any cause whatever durg the progress thof. Damage to works.

13. The contractor shl psonally superintend the exon of the works, & shl not assn [or sublet] this contract, or any pt thof, witht the express licence & approval in writg of the owner, Contract not to be assigned (*d*).

14. In case at any time durg the progress of the works any unnecy delay shl occur in the carryg on of the same through the default of the contractor [& such delay shl be certified in writg by the surveyor], & the owner, or the surveyor, shl give a written notice to the contractor to proceed with the sd works, or leave the same at his then or last known place of abode or business, & the contractor shl not proceed with the sd works to the satisfon of the surveyor within —— days after such notice shl have been so given, or left, or in case the contractor shl at any time neglect or omit to pull down or remove any work or materials wch the surveyor shl have certified in writg to be defective, or not accdg to contract, within —— days after written notice so to do shl have been given to him by the owner or the sur- Power in case of delay or bad work to take works out of contractor's hands.

(*d*) This would not of course interfere with an assignment by the contractor of moneys to become due to him under the contract, subject to the owner's rights under clauses 10 and 14. As to the effect of an assignment by way of mortgage or otherwise of such moneys (whether actually earned or not), as between the particular assignee and the trustee under a subsequent bankruptcy or liquidation of the contractor, see *Tooth* v. *Hallett*, 4 Ch. 242 (where the claim of the trustee was preferred; but the case turned or is distinguishable on the ground that, the contractor being in default, the buildings were completed by the trustee with his own moneys, so that the case was the same as if the work had been taken out of the contractor's hands under the forfeiture clause); *Exp. Nichols*, 22 Ch. D. 782, distinguished in *Exp. Moss*, 14 Q. B. D. 310; *Drew* v. *Josolyne*, 18 Q. B. D. 590. As to the effect of such an assignment upon subsequent dealings between the owner and the contractor, see *Brice* v. *Bannister*, 3 Q. B. D. 569. As to assignment by contractor.

veyor, or left as afsd, or within such further time as may be specified in such notice, or in case the contractor shl assn [or sublet] this contract or any pt thof witht licence (*a*): Then & in any such case the owner shl be at liberty, witht avoidg this contract, to take the sd works wholly or partially out of the hands of the contractor, & to employ any other pson or psons to exte the same, & for that ppose to take posson of, & use all materials, scaffoldg, plant, tools, implemts, & things on or about the sd works; & all expses & damages thby incurred shl be ascertained & certified by the surveyor, & shl be pd by the contractor to the owner.

Certificates of surveyor.

15. The certfe, or decision in writg of the surveyor upon any mre as to wch he is hby required or authorised to certify or decide, shl be final & bindg upon both pties, except that the surveyor may by any certfe make any corron or modificon in any previous certfe wch shl have been made by himself, or by any predecessor in his office.

Conformity to building Acts.

16. The contractor shl conform in all respts to the provons & regulons of any genl or local Act of Parliamt, or of any local authority wch may be applicable to the sd works, & indemnify the owner agst all penalties incurred by reason of the non-observce of any such provons or regulons.

Interference with lights.

[17. The owner shl indemnify the contractor agst all actions & pcdgs on the pt of any pson havg or claimg ancient lights on acct of any actual or alleged or apprehended interferce of the sd bldgs & works thwith.]

Arbitration (*b*).

[18. *Arbitron Clause.* *See* Arbitron.]

As to bankruptcy.

(*a*) It has been usual to extend this clause to the case of the contractor becoming bankrupt, &c., but such a provision has been decided to be void as operating to deprive the trustee in bankruptcy of rights which he would otherwise have had in respect of the bankrupt's property, and being therefore opposed to the policy of the bankrupt law according to the principle noticed above, p. 8, note (*Exp. Barter*, 26 Ch. D. 510), and is therefore here omitted. As to the right of the trustee in bankruptcy to disclaim onerous contracts, see the Bankruptcy Act, 1883, s. 55.

(*b*) The expediency of inserting an arbitration clause may be doubtful, unless it be a clause making the decision of the architect or surveyor conclusive. For a very stringent clause of this nature which was upheld, see *Tullis* v. *Jacson*, [1892] 3 Ch. 441.

In wits whof the sd pties have hrunto set their respive hands the day & yr first above written *or*, "As wits the hands of the sd pties."

Signed by the above-named ——, in the presce of, *or*, "Wits to the signature of the above-named ——."

II.

AGREEMENT *with a* Builder *or* Contractor. *Short Form* (*c*).

Parties, as in the last Precedent.

1. The contractor shl forthwith commce & bfe the expiron of —— weeks from this date in all respts complete with the best materials in the best workmanlike mner & to the satisfon of the owner all the works & things mentd or refd to in the parlars or specificon hrunto annexed in & upon the house & premes thrin mentd. Agreement to execute works.

2. The contractor shl within one week from the complon of the sd works & things remove all his scaffoldg, plant, & materials from the premes. To remove plant on completion.

3. The owner shl pay to the contractor the sum of £—— for the sd works & things. Payment.

4. If from any cause whatever the sd works & things shl not be completely finished, & the sd scaffoldg, plant, & materials removed within the time & in mner afsd, then the owner may deduct from any moys then or thrafter due or payable to the contractor the sum of £—— per day for every day after the expiron of —— weeks from this date until such complon & removal shl be effected, as & for liquidated damages. Penalties for delay.

5. In case there shl not be sufft moy due to the contractor Payment of penalties.

(*c*) This form may suffice for small transactions, but is less protective to the owner than the last precedent.

to make such dedon, then the excess shl be pd by the contractor to the owner.

On default of contractor owner may employ other workmen.

6. In the event of such default the owner may employ & pay other workmen to finish the sd works, & may use any scaffoldg, plant, & materials on the premes belongg to the contractor for such ppose, & shd he pay, or be liable to pay, a larger sum for finishg such works than the amt he wd be indebted for to the contractor, then the excess shl be pd to him by the contractor.

Owner may require omission of works.

7. The owner may, if he thinks fit, require the omission of any of the works, & in that case a proportionate sum shl be deducted.

Contract to include incidental work.

8. All work rendered necy is conseqce of the doing of the works hby agrd upon shl be deemed to be included in & form pt of this contract, although not mentd in the specificon, & no addonal paymt shl be made to the contractor for the same.

Additional works only upon written order.

9. No extra or addonal works shl be done by the contractor except upon the previous order in writg of the owner agreeg to pay for the same, & shd the same be done witht such order the contractor shl not be entled to any addonal paymt for the same.

Contractor to make good defects.

10. Lastly, the contractor shl as well after as bfe he shl have been pd for the sd works & things, & witht any further paymt, for a period of one yr after complon make good any defects whatever in such works & things, & especially in the roofs or drainage of the premes, & the owner may retain a sum not exceedg 10 p. c. of the total contract price until the expiron of such period as a secy for the pformce by the contractor of this stipulon. As wits, &c.

III.

AGREEMENT *with a* BUILDER *or* CONTRACTOR. *A very Short Form, where the Terms are embodied in the Specification.*

PARTIES, as in Precedent I.

1. THE contractor shl exte, maintain, & do the sevl works & things mentd & described in the specificon or parlars hrunto annexed & signed by the contractor & by ——, the architect [surveyor] of the owner, & the plans & drawgs refd to in such specificon or parlars, in & upon the premes thrin mentd within the time or times & in conson of the paymts to be made to him by the owner as thrin mentd, & shl in all respts be bound by, pform, observe, & fulfil all the condons, stipulons, & provons expd & contd in such specificon or parlars, & wch are expd or intd to be bindg on & to be pformed, observed, or fulfilled by the contractor. Agreement by contractor.

2. IN conson of the premes the owner shl make to the contractor the paymts mentd in the sd specificon or parlars at the respive times & in the mner thrin mentd, subjt to the dedons, retentions, and abatemts (if any) to be made thfrom as thrin expd, & shl in all respts be bound by, pform, observe, & fulfil all the condons, stipulons, & provons thrin contd, & wch are expd or intd to be bindg on & to be pformed, observed, & fulfilled by the owner. As WITS, &c. Agreement by owner.

IV.

CONTRACT *between a* FIRM *of* SHIPBUILDERS *and a* STEAMSHIP COMPANY *for building* STEAMERS. VARIATIONS *where the contract is under* SEAL (*a*).

AGRMT [under seal] made, &c., betn A. & Co., of, &c.

(*a*) As to the mode in which limited companies contract, see the Companies Act, 1867, 30 & 31 Vict. c. 131, s. 37. Where an agreement to As to mode in which

(hinafter called the builders), of the one pt, & the —— Co. Limd (hinafter called the pchasers), of the other pt.

Agreement to build vessels.

1. The builders (provd the pchasers shl duly make to them the sevl paymts at the sevl times & in mner hinafter set forth) will build & complete for the pchasers, of the best & most substantial materials & workmanship, two vessels & engines, with outfit & appurts, of the followg class, dimensions, & power, viz.: Class A 90 in Lloyd's Registry, dimensions, length —— ft., breadth inside —— ft., depth from top to keel —— ft., & havg cylinders of —— & —— inches, & —— stroke, & a workg pressure of —— lbs. to the square inch, & in all other respts accdg to the specificons & plans signed by the builders & the pchasers' engineer.

Time for completion.

2. The builders shl build the sd vessels under the superintendce & to the reasble satisfon of an engineer or surveyor for the time being appted by the pchasers, & (provd the paymts afsd are duly made) shl launch the sd vessels & make the same in all respts fit & ready for their trial trips on or bfe the —— day of ——, & shl forthwith thrafter complete the sd vessels & make the same ready for delivery afloat to the pchasers or their duly authorised agent in a usual & convenient place, in river or dock, on or bfe the —— day of ——, & in case of default for every week's delay beyond the last-mentd date the builders shl pay to the pchasers the sum of £——, as liquidated & ascertained

Penalties for delay.

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limited companies contract.

which a company is a party, which, like the above precedent, does not require to be by deed, but would be sufficient if in writing signed on behalf of the company by any person authorised in that behalf, is in fact executed by the company under its common seal, it is believed to be usual to make it under seal as to the other parties also; whether the affixing of the seal of the company would make the instrument chargeable with stamp duty as a deed, if the other parties execute under hand only, seems doubtful, but the practice is to stamp it as a deed. Where a deed is not essential, it will suffice if the agreement is signed by an authorised agent of the company (usually one of the directors and the secretary). There can now rarely, if ever, be any advantage, except with reference to the Statute of Limitations, in employing a deed where an agreement under hand only is by law sufficient.

damages, & not as a penalty, & so on in like proportion for any period less than a week, & such amt may, at the option of the pchasers, be deducted from the pchase moy.

Works may be inspected on behalf of purchasers.

3. Any of the dirors of the pchasers or their engineer or surveyor or any other pson authorised in that behalf by writg under the hand of their secretary may, durg the bldg of the sd vessels & on the trial thof, at all reasble times visit & inspect the same, & examine the state & progress of the sd vessels & the workmanship thof, & the materials used & intd to be used in the constron thof, & may by all pper means test & prove the quality & sufficiency of the work & materials thof, & the sd engineer or surveyor may reject any work or material wch may be inconsistent with the sd specificons or orwise not accdg to contract, & require the same to be removed, replaced, or altered at the expse of the builders.

Purchase money to be paid by instalments.

4. The pchasers shl pay to the builders as the pchase moy for each vessel the sum of £——, by five equal instalmts of £—— each, to be pd in cash [by acceptces of the pchasers at six months' date], namely, one-fifth when the keel has been laid, one-fifth when the ship is in frame, one-fifth when the ship is plated, the boiler shells riveted, the furnaces put togr, & the cylinders for the engines cast & bored, one-fifth when the ship is launched & the machy ready to go on board, & the remaing fifth when the ship is completed & ready for delivery after a satisfactory trial. [The sd respive instalmts shl be pd ten days after the builders shl procure & produce to the pchasers at their office in —— the certfe in writg of the sd engineer or surveyor that such instalmts are resply due & payable. Provd that in case the sd engineer or surveyor shl at any time neglect or refuse witht reasble cause to give to the builders his certfe in writg that any instalmt is due & payable, when such instalmt is in fact due & payable, the mre in dispute shl be referred to arbitron as hinafter provd].

Vessels during building

5. The vessels as they are constructed, & all their engines, boilers, & machy, & all materials from time to time intd

to be the property of purchasers.

for them, whether in the bldg yard, workshop, river, or elsewhere shl (*a*), immedly as the work proceeds, become the ppty of the pchasers, & shl thenceforth be & remain in the posson of the builders only as the trees of the pchasers for the sole ppose of completg the sd vessels & deliverg the same when completed to the pchasers, & shl not be deemed to be within the posson, order, or disposal of the builders for any ppose except the complon thof & the due pformce of this contract, but the builders shl at all times have a lien thron for their unpd pchase moy (*b*).

Power to purchasers to complete works on default of builders (*c*).

6. In the event of the builders makg default in the prosecon of the constron of the vessels, engines, boilers, & machy, or makg default in the delivery of either vessel by the date stipulated, it shl be competent for (but not incumbent upon) the pchasers to take posson of the vessels in their then state, & all materials intd for them as afsd, & to complete the vessels, engines, boilers, & machy, with

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(*a*) If the clause in the text is inserted, the following may be added; as to which, see *Wood* v. *Bell*, 6 El. & Bl. 355:—

Additional clause.

"Immedly upon the paymt of the first instalmt of the pchase moy the builders shl affix the name of the pchasers upon the vessels in a conspicuous place & mner, & shl not remove the same witht their consent."

Order and disposition.

(*b*) As to what is sufficient to take a ship out of the order and disposition of the builders, see *Woods* v. *Russell*, 5 B. & Ald. 942; *Wood* v. *Bell*, 6 El. & Bl. 355; *Exp. Hodgkin*, 20 Eq. 746; *M'Bain* v. *Wallace*, 6 App. Ca. 588. In *Exp. Hodgkin* the question was raised, but not decided, whether a mortgage of an unfinished ship is within the Bills of Sale Acts; as to this, it seems that the ship and materials being in the apparent possession of the builders, the above clause would be a bill of sale, but that not being a security for money it would not be within the Act of 1882, and would, under the Act of 1878, be good as between the parties, though bad for want of registration as against creditors. It is conceived that if (as is sometimes done) the clause gave the purchasers only a lien for the instalments of purchase-money paid by them until completion, it would be void under the Act of 1882; the case being different from those under ordinary building contracts referred to above, p. 8, note (*c*). That an unfinished ship is liable to be distrained upon for rent owing by the builders as lessees of the yard or dock, see *Clarke* v. *Millwall Dock Co.*, 17 Q. B. D. 494.

Bills of Sale Acts.

(*c*) As to this clause not extending to bankruptcy, see *Exp. Barter*, 26 Ch. D. 510; *supra*, p. 8, note (*c*).

power for this ppose to enter into any contract with other builders, & to use the yard, workshops, machy, & tools of the builders witht makg any paymt or allowce for such use, & the cost incurred by the pchasers in the exercise of any of the powers of this clause shl be deducted from the pchase moy then unpd, if sufft, & if the same is not sufft shl be made good & pd by the builders. Any exercise of the powers of this clause shl be witht prejudice to any claim for delay under clause 2.

Insurance

7. The vessels & machy shl be at the risk in all respts of the builders until delivered to the pchasers, & until such delivery the builders shl, at their own cost, keep the same, or such pts thof as shl from time to time be constructed & in their posson, insured agst loss or damage by fire in one or more first-class office or offices [to be approved by the pchasers in the jt names of the builders & the pchasers] in an amt exceedg by £—— for each vessel the pchase moy then pd for the same, & shl deposit the policies for such insurces with the pchasers [& in case the builders shl neglect to insure the sd vessels as afsd or to keep such insurces on foot, the pchasers may effect & keep up such insurces & deduct the expses thof from the pchase moy], & in case the sd vessels or their machy or any pt thof shl be destroyed or damaged by fire, the moy reced in respt of the insurces thof shl be applied in rebldg or reinstatg the same.

No payment for extra work

8. No extension of time shl be allowed, & no paymt whatever shl be made for extra work & materials (but such extras shl be considered as done for the satisfon of the builders), unless bfe the same are done or provd, the pchasers by writg under the hand of one of their dirors & their secretary direct such extras to be done or provd, & agree to the extension of time & increase of cost to be allowed in respt thof.

Purchasers may, by writing, require alterations.

The pchasers shl be at liberty to require any alterons or addons to be made in or to the vessels, engines, boilers, or machy [provd such alteron or addon does not injuriously affect the genl intention & design of the sd specificon &], provd they do so in writg under the hand of one of their

dirors & their secretary, in wch case the terms & prices of such alterons & addons, & the extension of time (if any) to be allowed in respt thof shl be agrd upon in writg, & this agrmt shl thenceforth take effect as varied by such supplemental agrmt.

Trial trips

9. The trial trips shl be [betn the ports of —— & —— & shl be] at the risk & expse, in all respts, of the builders, who shl find the crew necy for the safe navigon of the vessels & for the engine departmts on such trial trips, & the coals & engine stores, & also the marine insurce on such trials, & no delivery shl be considered complete until after a trial satisfactory to the pchasers' engineer or surveyor.

Extension of time in case of strike or delay in payment of any instalment (*a*).

10. In the event of a strike or lock out of workmen takg place in the district & extendg to the builders' yard, or any other place where the materials for the sd vessels or the machy thof are prepared, or in case the hours of labour of the workmen employed by the builders shl be reduced below those at psnt customary in their works, so as to interfere with the constron of the sd vessels, & provd that notice in writg of such strike or lock out or redon in the hours of labour shl be immedly given by the builders to the pchasers at their office in ——, or in case of any delay takg place in the paymt of any instalmt of the pchase moy, the builders shl be allowed one day's extension of time for the bldg & complon of the sd vessels for each day of strike or lock out or delay in paymt, or, in case of such redon in the hours of labour as afsd, shl be allowed a pper extension of time to be settled in case of diffce by a reference as hinafter provd.

Provisions in case of default in payment of purchase money.

11. In the event of any instalmt of the pchase moy remaing unpd for fourteen days after the same is due, the builders shl be entled to intt thron at £2 p.c. p.a. over the current Bank of England rate, & shl be at liberty to sell the vessel upon wch such instalmt may be overdue, as she may then lie, with the engines, boilers, & machy, or may complete her & sell her after complon by public

(*a*) As to the meaning of the word "strike," see *Stephens* v. *Harris*, 56 L. J., Q. B. D. 516.

auction or private contract, & any loss on such resale shl be made good by the pchasers, & any balce of the proceeds of such sale wch may remain after satisfyg all claims of the builders shl be pd to the pchasers.

Defective work.

12. In the event of any defective work or material being discovered in the sd vessels, or either of them, or the engines, boilers, or machy thof within six months after the same shl have been delivered to the pchasers, wch shl be proved by them to have existed at the time of such delivery, then & in such case the same shl be repaired & replaced by the builders or at their expse, but this shl not include consequential damage or any extra cost beyond the expse of such repairs if the same were done in the United Kingdom.

13. *Arbitron Clause.* *See* Arbitron.

In wits whof the sd pties hto of the first pt & one of the dirors & the secretary of the sd —— Co Limd have hrunto set their hands, *or*, "the sd pties hto of the first pt have hrunto set their hands & seals, & the sd —— Co Limd have hrunto affixed their common seal" the day & yr first above written.

V.

AGREEMENT, *engaging a* Manager *of a* Business, *or other* Officer, *to be paid a* Salary, *and a* Percentage *on the* Gross Returns *or* Profits. Variations, *where he is to go* Abroad.

Parties, A., *principal*, 1; B., *manager*, 2.

Engagement of B. as manager for a term.

1. The sd B. shl durg the term of —— yrs from the date hrof, if both pties shl so long live, & the sd A. shl continue to carry on the business of ——, [at ——, in India], whether alone or in ptnp with any other pson or psons, serve the sd A. as manager, *or*, "superintendent," *or* "foreman" [at —— afsd] of the sd business, & shl give his

whole time & attention to the sd business (*a*), & shl use his best endeavours to improve & extend the same, & shl in all respts diligently & faithfully obey & observe all lful orders & instrons of the said A. in relon to the conduct of the sd business, & shl not, witht his consent, divulge any secrets or dealgs relatg thto.

Manager to proceed abroad.

[2. The sd B. shl when required by the sd A. proceed to ——, by ——, his boat & railway fares, hotel & other expses on the journey being pd by the sd A.]

To keep accounts,

3. The sd B. shl, whenever required by the sd A., render to him a full acct of all dealgs & transons in the sd business, & shl keep at the place of business at —— pper books of acct, contg entries of all moys reced & pd, & all goods bought, or recd, or sold, or delivered out, & all parlars relative thto, & other mres necy to show the state of the sd business, & shl duly acct for all moys & secs belonging to the sd A., wch shl come into the hands or power of the sd B., & forthwith pay the same to the sd A., or to the bankers for the time being of the sd A. to his credit, except only such moys as the sd B. shl be authorized by the sd A. to retain for the immediate requirements of the sd business.

and pay over moneys.

To be paid a salary.

4. The sd A. shl pay to the sd B. durg the continuce of his engagemt & provd he shl duly observe & pform the agrmts hrin on his pt contd, the salary of £—— p.a., by equal qtrly paymts, on the —— day of ——, &c., [on the usual qtr days] in each yr, witht any dedon except income-tax, the first paymt to be made on the —— day of —— next: [And shl also pay to the sd B. every yr such further sum as shl be equivalent to [10] p.c. on the gross returns of the sd business [at ——], witht deductg intt upon capital, rent, rates, taxes, repairs, wages, or other outgoings or expses, but witht takg into acct bad or doubtful debts, *or*, "as shl be equivalent to [10] p.c. on the net profits, if any, derived from the sd business," such last-mentd yrly

And per-centage on gross returns.

Or on net profits.

(*a*) That in the absence of a negative stipulation the manager could not be restrained by injunction from giving part of his time to another business, see *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416.

paymts to commce, & be calculated, as from the —— day of —— last, & to be payable on the —— day of —— in each yr]. And a proportionate pt of the sd salary of £ —— shl be pd up to the death or terminon of the engagemt of the sd B. from the last precedg day of paymt [togr with a sum equivalent to [10] p.c. on the gross returns, *or*, "net profits," wch shl have arisen from the sd business since the —— day of —— then last past].

[5. With a view to the ascertaing of the amt of such further sum as afsd, the accts of the sd business shl be made up by, or under the diron of, the sd A. every yr on the —— day of ——, & also on the day on wch the engagemt of the sd B. shl terminate, or as soon after each such day as may be, & a pper balce-sheet thof shl be made out & furnished as soon as may be to the sd B., & shl, on being verified by a statutory declon of the sd A., or of some pson who shl have been employed by him to make up the sd acct, be bindg & conclusive upon the sd B.] Annual accounts.

[6. Nothing hrin contd shl be construed as in any sense creatg a ptnp betn the said A. & B., or as givg to the sd B. any of the rts or renderg him subjt to any of the liabilities of a ptner except such a rt to an acct of the gross returns [net profits] of the sd business as shl be necy for the ppose of ascertaing the amt of any further sum payable to him as afsd, in case such amt shl not be ascertained & verified in mner hinbfe provd.] Agreement not to create a partnership (*b*).

7. The sd B. shl also durg the continuce of his engagemt be provd by the sd A. with a suitable residce at ——, or Board and lodging.

(*b*) This agreement would not create a partnership even as the law stood before Bovill's Act, 28 & 29 Vict. c. 86, s. 2, which has been repealed but, in effect, re-enacted by the Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 2 (3). As to sharing gross returns, see s. 2 (2). Even an agreement to share profits and losses did not necessarily constitute a partnership, if on the whole agreement it appeared that the person so sharing was not intended to be a partner, but only an employé or servant: *Walker* v. *Hirsch*, 27 Ch. D. 460. As to an agreement to share profits creating a partnership, see, before the late Act, *Badeley* v. *Consolidated Bank*, 38 Ch. D. 238; Lindley on Partnership, pp. 10—17. As to what creates a partnership.

elsewhere, free from rates & taxes, *or*, "with good & sufft meat, drink, lodging, washg, & fuel, & shl, if required by the sd A., reside in the house in wch the sd business is now, or shl for the time being be carried on, & shl in that case have the use of —— rooms thrin, free from all rent, rates, & taxes in respt thof."

Termination by notice.

8. Eir of the pties hto may terminate the engagemt of the sd B. at any time bfe the expiron of the sd term of —— yrs, on givg, or sendg by post in a registered lre to the other pty, six calr months' notice in writg, such notice to be given or sent to the sd A. at his usual place of abode or business in England, & such notice to be given or sent to the sd B. at his usual place of abode, or at the countg-house at wch the sd business shl then be carried on [in India], & upon the expiron of six calr months from the date of such notice being given or posted, the sd engagemt shl determine: Provd always that the sd A. may terminate the sd engagemt at any time on paying to the sd B. in lieu of such notice as afsd, six calr months' salary in advce [with a further sum in lieu of such percentage as afsd, for such six months, equal to the sum wch became payable by way of percentage for the then last precedg six months, for wch accts shall have been made out as afsd].

Or on payment of six months' salary.

Provision for default or incapacity of manager.

9. If the sd B. shl at any time wilfully neglect or refuse, or from illness or any other cause, become or be unable to pform any of the duties devolvg upon him under this engagemt, it shl be lful for the sd A. to suspend the salary [& further sum by way of percentage] of the sd B. durg such neglect, refusal, illness, or inability as afsd: And further, it shl be lful for the sd A. in the event of such refusal or neglect of the sd B. or his becomg incapacitated by illness or orwise, immedly to terminate the engagemt of the sd B. witht givg any such notice, or makg such paymt in advce as is provd for in clause 8.

Power to suspend,

or determine.

Expenses of return journey to be paid.

[10. The sd A. shl pay the boat & railway fares, hotel & other expses of the journey of the sd B. on his return to England in any of the follg events—

First. If the sd A. shl terminate the engagemt of the sd B. by notice psuant to the 8th clause, & the sd B. shl start on his journey to England within three calr months from the expiron of such notice. On termination by notice,

Second. If the sd A. shl terminate the engagemt of the sd B., psuant to the 9th clause, in consequce of the illness of the sd B., & such illness shl not have been occasioned by the fault of the sd B., & the sd B. shl start on his journey to England within three calr months from such terminon of his engagemt, or so soon afterwards as he shl be able to journey with safety. or in case of illness,

Third. If the engagemt of the sd B. shl continue until the expiron of the sd term of —— yrs, & he shl always conduct himself pperly in the pformce of his duties, & shl start on his journey to England within three calr months from the expiron of the sd term of —— yrs.] or at end of engagement.

[11. In case the engagemt of the sd B. shl at any time, within two yrs from the date of this agreemt, be terminated by notice given by the sd B. psuant to the 8th clause, or be terminated from any cause other than the illness of the sd B., psuant to the 9th clause, he, the sd B., shl thrupon immedly repay to the sd A. the sum pd by the sd A. psuant to the 2nd clause. Such sum may be recovered by the sd A. as a debt due from the sd B., in an action or orwise in any Court of competent jurisdon [in England or India]. Provd that this clause shl not prejudice or affect any other claim or remedy of the sd A. agst the sd B. for breach of contract.] Repayment of passage money.

[12. The sd B. shl, at his own expse, find & provide two responsible sureties to the amt of £—— each or the guarantee of a responsible Co to the amt of £—— for his good conduct, & for the due pformce by him of this agrmt.] Sureties.

In wits, &c.

VI.

AGREEMENT *under* SEAL *with* TRADERS *for a* LOAN *for a* TERM *of* YEARS *at* INTEREST *and a* SHARE *of* PROFITS (*a*).

Parties. THIS INDRE, made the —— day of ——, BETN A. & B., carryg on business in ptnp togr as —— at ——, under the style or firm of A. & Co. (hinafter refd to as the borrowers) of the one pt, & C. of, &c. (hinafter refd to as the lender, wch expression shl be deemed to include his exs, ads, & assns, where the context so admits), of

Recital. the other pt: WHAS the lender has this day pd & advced by way of loan to the borrowers the sum of £—— for the term of —— yrs from the date hrof upon havg the repaymt of the same with such intt as is hinafter mentd secd in mner

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As to what constitutes partnership. (*a*) The main point is to protect the lender from being liable as a partner to creditors, as to which such an agreement as the above would clearly be within the protection of the Partnership Act, 1890, 53 & 54 Vict. c. 39, which has repealed but, in effect, re-enacted the provisions of Bovill's Act, 28 & 29 Vict. c. 86 (so far as the protection is needed, the repealed Act having, as it seems, in this respect done no more than declare what was already the law); see the late Act, s. 2, (3), and s. 3; and the following cases (before the Act) as to what constitutes a partnership: *Bullen* v. *Sharp*, L. R. 1 C. P. 86; *Holme* v. *Hammond*, L. R. 7 Ex. 218; *Mollwo, March & Co.* v. *The Court of Wards*, L. R. 4 P. C. 419; *Exp. Mills*, 8 Ch. 569; *Ross* v. *Parkyns*, 20 Eq. 331; *Syers* v. *Syers*, 1 App. Cas. 174; *Exp. Sheil*, 4 Ch. D. 789; *Exp. Tennant*, 6 Ch. D. 303; *Exp. Delhasse, In re Megevand*, 7 Ch. D. 511; *Pooley* v. *Driver*, 5 Ch. D. 458; *Walker* v. *Hirsch*, 27 Ch. D. 460; *In re Stone*, 33 Ch. D. 541; *Badeley* v. *Consolidated Bank*, 34 Ch. D. 536, reversed on appeal on the question of partnership or no partnership, 38 Ch. D. 238; 36 W. R. 745. The result of the Act and the decided cases appears to be that a partnership is not necessarily excluded by a provision such as that in clause 7, nor by any means necessarily implied by a sharing of profits, but that the whole of the agreement is to be looked at to ascertain whether the meaning is that the parties should carry on the business as principals and as agents for each other, *i.e.*, as a joint business, or that it should be the business of one only. See further Lindley on Partnership, pp. 10—17. As to agreements of the nature of that in the text, see *Re Vince*, [1892] 1 Q. B. 587, 2 Q. B. 478, where, however, on the appeal the agreement was held void for obscurity.

hinafter appearg, NOW THIS INDRE WITNETH that it is hby covted & agrd by & betn the sd pties hto as follows :—

1. *Jt & sevl covt by the borrowers with the lender*, that the borrowers will pay to the lender the sum of £—— on the ——— day of ——, And until the sd ppal sum shl be repd will pay to him intt thron or on so much thof as shl remain owing at the rate of —— p.c. p.a. by qtrly paymts on the usual qtr days in each yr, And will also pay to him, by way of addonal intt, for each yr durg wch the borrowers shl make any net profits, such further sum as shl be equivalent to one equal —— pt of such net profits derived from the sd business, such last-mentd yrly paymts to be payable on the —— day of —— in each yr. Covenant to pay principal interest and share of net profits.

2. *Yrly Accts*, see p. 21.

3. The net profits shl, for the ppose of ascertaing the amt of such addonal intt as afsd, be taken to be the amt of the gross rects after deductg intt on the sd sum of £—— at the afsd rate of —— p.c. p.a., as well as intt at the like rate on any other capl employed by the sd borrowers in the sd business & all paymts for rent, rates, taxes, repairs, wages & other workg expses & outgoings pperly deducted in the estimon of net profits. What are net profits.

4. The borrowers shl keep all usual & pper books of acct of & concerng all pchases & sales of goods made by them, & of all other mres & transons concerng the premes, & the sd books & accts & all bills, notes, secs for moy, lres, & other writgs relatg to the mres afsd in the posson or under the control of the borrowers shl be carefully preserved by them (damage by fire or other inevitable accident only excepted) & shl at all reasble times be open to the inspon of the lender, who or whose agent or agents shl have full liberty to make copies or extracts of or from the same or any of them. Borrowers to keep proper books of account.

5. The lender may require repaymt of the sd sum of £—— to be made bfe the sd —— day of —— if the borrowers shl cease to carry on the sd business [or shl, witht When lender may require repayment,

the consent in writg of the lender, admit any ptner with them in the sd business], or if any qtrly paymt of the sd intt on the sd sum of £ —— or any sum payable by way of addonal intt as hinbfe provd shl be in arrear for 28 days, or
on notice. if the lender shl have given to the borrowers or sent by post to their place of business for the time being not less than —— calr months' notice in writg in that behalf.

Borrowers may repay on notice. 6. It shl be lawful for the borrowers to repay the sd sum of —— at any time bfe the sd —— day of —— on givg to the lender or sendg by post to his usual or last known address not less than —— calr months' notice in writg of their intention in that behalf, such notice to expire on the —— day of —— in any yr.

7. *Agrmt not to create a ptnp*, see p. 27. [*Arbitron clause, see* Arbitron.] In wits, &c.

VII.

AGREEMENT *between a* Banking Company *and a* Managing Director *of a* Branch abroad.

Parties, The —— Bank Limd (hinafter called the Bank), 1. A. of, &c. (hinafter genlly called the Managing Diror), 2.

A. to be managing director. 1. The sd A. shl become & be from & after the —— day of —— Managing Diror of the business of the Bank, at its branch establishmt opened or forthwith to be opened in —— (hinafter called the Branch).

Powers and duties. 2. The Managing Diror shl possess all such powers, & pform all such duties as shl be necy usual or convenient to enable him effectually to manage & superintend the business of the Branch, subjt nevs to the stipulons hinafter contd & to any such addonal or other stipulons & condons as may from time to time hrafter be created or imposed by any resolons of the Bank or its Board of Dirors.

Managing 3. For the pposes of the business at the Branch, the

Managing Diror shl have power to authorize & make all necy expenditure & pay all necy outgoings, & to hire & employ all such clerks, messengers, or other servants as he shl consider to be required for carryg on the business of the Branch, & shl also have the absolute control over, & also power at his absolute discron to dischge any such psons, save & except that he shl, if & when exply required so to do by the Bank or its Dirors, hire, employ or dismiss any clerk, messenger, or other servant, whether such hirg or dismissal shl be accdg to his wish or not. director to pay outgoings and hire clerks.

4. The Managing Diror shl make out & deliver, or transmit to the Bank or its Board of Dirors, or to such pson or psons as they shl require from time to time, a statemt of such expenditure & outgoings, & of the psons so employed, & the amt of the salaries, wages, or other remuneron to wch they are resply entled, & in respt of what mre or services such expenditure or outgoings, salaries, wages, or other remuneron is or shl be payable, togr with such other parlars in relon to such mres or psons as the Bank or its Dirors shl from time to time require. To transmit to Bank statement of outgoings.

5. The Managing Diror shl keep, or cause to be kept, full & correct entries, minutes or accts of all Bankg accts opened or withdrawn, & of all rects of moys, secs or effects, & of all advces made & discounts or credits granted, & of all special operons entd into on behalf of, or connected with, & of the genl assets, balces, debts, & credits of the Branch, & also all such further or other parlars & details as shl from time to time be required by the Bank or its Dirors with reference thto. To keep accounts.

6. The Managing Diror shl also from time to time, as & when he shl be required by the Bank or its Dirors so to do, compile or extract, & transmit to the Bank or its Dirors at its chief establishmt in London or elsewhere, as required, or to any officer thof or other pson or psons who shl be duly named for that ppose, an abstract, epitome, or statemt in full detail of all parlars & ordinary or special circes relatg to the sd business at or connected with the Branch, or to his managemt of the same, & parlarly & immedly upon the To transmit to Bank statement of business,

and important information. occurrce of any circe callg for special attention on the pt of the Bank or its Dirors, shl transmit to the sd chief establishmt full & sufft notice thof, & also shl at any time permit

To permit inspection of accounts. the Bank or its Dirors, or any pson or psons duly authorised by the Dirors in that behalf, to inspect & examine all books of acct, entries, minutes, & other parlars so kept by him, & shl give to the Bank or its Dirors, or any pson or psons authorized by them as afsd, all such informon, facilities, & assistce as shl be reasbly required, to enable them or him fully to understand any such accts or other parlars.

Faithful dealing. 7. The Managing Diror shl not divulge or make known in any mner whatsr any dealgs or concerns of or relatg to the business of the Bank, wheresr carried on or transacted, witht the authority of the Bank or its Dirors, but shl at all times be true & just to the Bank in all his dealgs, & shl not injure or unduly pledge its credit or assets, or employ or make liable the same save in the usual & regular course of business, & shl use his best endeavours & exertions to promote the welfare of the Bank & its business, & shl give his whole time & attention to the business of the Branch, & shl not give his time or psonal attention to any other business or mercantile transons whatsr (*a*).

Guarantee. 8. The Managing Diror shl at his own expse, if & when required by the Bank or its Dirors, procure a guarantee or guarantees for his duly & faithfully executg & pformg the duties of his sd office & the provons of this agrmt in every respt to such an amt as the Bank or its Dirors shl require, not exceedg £——, from by or with some responsible pson or psons, or Co or Cos, & shl deposit with the Bank the instrumt or instrumts by wch the same shl be effected.

Salary. 9. The Bank shl pay the Managing Diror after the rate of £—— British sterlg moy p.a. for his services as such Managing Diror by equal qtrly paymts, & by way of further remuneron for his services in each yr durg the term of three

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(*a*) As to this being enforceable by injunction, see *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416.

yrs from the sd —— day of ——, a commission at the rate of £15 for every £100 of net profits made durg each of such three yrs by the business of the Branch, after deductg all usual & necy outgoings & expses thof & intt on capl at the rate of £5 p.c., & after the expiron of such three yrs & durg the term of five yrs thrafter, a commission at the rate of £10 for every £100 of such net profits in each of such five yrs after such dedons as afsd: But so, nevs, that in no yr durg such five yrs shl the commission so to be rcced by him be in the whole less than the greatest amt reced by him on acct thof in any one of the three yrs precedg such term of five yrs. Commission.

10. The first yr of this agrmt & of the engagemt hby made of such Managing Diror shl be considered to be probationary or experimental, & at the end of such first yr it shl be lful for eir pty hto by notice in writg to the other pty forthwith to terminate this psnt agrmt & the engagemt hby made. First year to be probationary.

11. It shl be lful for the Bank or its Dirors to terminate this agrmt & the engagemt hby made at the expiron of three yrs from the sd —— day of —— by givg at least —— calr months' prior notice in writg to the Managing Diror. Bank may terminate engagement at the end of three years.

12. Eir of the pties hto may at any time terminate this agrmt & the engagemt hby made, by givg to the other pty hto —— calr months' notice in writg, but so nevs that eir pty givg such notice under this psnt provon shl, at the expiron thof, pay to the pty receivg the same the sum of £——, as liquidated damages for such terminon of this agrmt, except that in case the Managing Diror shl misconduct himself in his sd office, or fail to observe & pform the provons of this agrmt, no such sum by way of liquidated damages shl be pd to him. Termination by notice.

13. Any notice hby authorised or required to be given by the Bank to the Managing Diror shl be sufftly given by postg the same in a registered lre addressed to him at the Branch or by leavg the same in his usual private room at the Branch, & any notice hby authorised or required to be given by the Managing Diror to the Bank shl be sufftly given by Notices.

postg the same in a registered lre addressed to the Manager of the Bank at the ppal office in London.

Law of England to apply.

14. Lastly, this agrmt shl in all respts be construed & carried into effect accdg to the law of England, so far as may be & circes will permit. In wits, &c.

VIII.

AGREEMENT *under* seal *appointing an* Editor *of a* Newspaper.

Parties.

Recitals.

Parties, A. & B., *Proprietors*, 1. C., *Editor*, 2. Whas the sd A. & B. carry on business in co-ptnp as proprietors of a certain newspaper or periodical called, &c., printed & published at, &c.: And whas it has been agrd that the sd C. shl be appted resident editor of the sd newspaper or periodical for the period at the salary & subjt to the covts & condons hinafter mentd & contd, NOW THIS INDRE WITNETH that it is hby covted & agrd by & betn the sd pties hto as follows:—

Appointment of C. as editor.

1. The sd A. & B. hby appt the sd C. resident editor of the sd, &c., for the term of five yrs commencg from, &c.

Powers of management.

2. The sd C. shl durg the sd term conduct all the business of editg & orwise in relon to the sd newspaper subjt as hinafter mentd, And shl have full power to appt & dismiss all sub-editors, correspondents, contributors, clerks, servants, & all other psons employed in or about the sd business, And also, in connon with the sd business but not orwise, full powers of purchasg stock, signg bills & rects, increasg & diminishg salaries, prosecutg & defendg actions & legal pcdgs, & genlly doing all things wch he may bonâ fide & to the best of his judgmt consider to be conducive to the intt of the sd business.

Salary.

3. The sd C., so long as he shl be such resident editor, shl be allowed out of the ptnp funds the sum of £—— per calr month as salary, wch shl be pd or may at his option be

retained by him out of any moys of the said ptnp comg to his hands in connon with the sd business.

Not to do certain things without consent

4. NOTHING hrin contd shl be construed to authorise the sd C. witht the previous consent in writg of the sd A. & B. or other the ptners for the time being in the sd business (hinafter called the proprietors) to mtge or pledge any of the ppty of the sd ptnp as secy for any loan or debt, or to expend any moy belonging to the sd ptnp for his private pposes or to pchase real ppty with the ptnp funds or to remove the press or publishg office or establishmt (except so far as may be temporarily necy for any rebldg, repairs or alterons, or by reason of fire or other accident), or to establish any branch presses or offices, or make any material alteron in the mode of carryg on the sd business.

Covenant by C. to conduct business to best of ability. To reside and obey instructions.

5. THE sd C. will at all times during the sd term conduct the sd business & edit the sd paper to the best of his ability, judgmt & discron, so as to advce the intts of the said ptnp, AND for that ppose will genlly reside at the sd place of business or such other place as may be fixed upon as the headqtrs of the sd newspaper [& shl at all times be subjt to & bound by all instrons & dirons wch may be given to him by the proprietors touchg the managemt of the sd business].

To remit dividends and furnish accounts, &c.

6. THE sd C. will durg the sd term duly remit qtrly divds (if the state of the ptnp funds shl admit of his doing so) to the proprietors, transmit to them qtrly statemts of acct & reports of the affairs of the ptnp, & give to them all informon that may be reasbly required.

To hold the office during the full term unless prevented by illness, &c.

7. THE sd C. will hold the sd office of resident editor (unless prevented by death or illness or reled thfrom by the consent in writg of the proprietors) for the sd term of five yrs, & will at the expiron or sooner determinon of the sd term, take all pper measures to hand over the sd office to any successor duly apptd unless he the sd C. shl be re-appted for a fresh term.

Not to conduct any other newspaper.

8. THE sd C. will not durg the sd term embark in or undertake the conduct or managemt of or be in any way intted or concerned directly or indirectly in any other

newspaper, journal, or periodical [whose intts are antagonistic to or incompatible with those of the afsd newspaper].

Add provons, if intd, for terminatg agrmt (see above Prects. V. & VII.) & arbitron clause, see ARBITRON. IN WITS, &c.

IX.

AGREEMENT *to serve as an* ASSISTANT *to two* PERSONS *in* PARTNERSHIP *as* MEDICAL PRACTITIONERS *and not to practise in the* DISTRICT *for* —— YEARS *afterwards.*

PARTIES, A. & B. (practisg in ptnp togr as physicians & surgeons at, &c.), 1. C., *assistant*, 2.

Engagement. 1. THE sd A. & B. hby agree to engage the sd C., & the sd C. hby agrees to enter into & continue in the service of the sd A. & B., or the survor of them, as assistant in every branch of their profession, practice, & business of physicians, surgeons, accoucheurs, & apothecaries from the —— day of —— for the period of —— yrs, & thrafter until the engagemt of the sd C. is terminated by notice as hinafter provd.

Diligent service. 2. THE sd C. shl, while he shl continue in the service of the sd A. & B., or the survor of them, faithfully & diligently serve them or him as such assistant as afsd, & devote his whole time to such service, & at all times obey & comply with their or his lawful commands & dirons in relon to the sd business & practice, & to the utmost of his skill & ability serve & promote the intts of the sd A. & B., or the survor of them, & shl not at any time [except in the case of sickness or unavoidable accident (*a*)] absent himself from their or his service witht their or his consent, & shl not, witht

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(*a*) As to the law in the absence of any provision for this event, see *Robinson* v. *Davison*, L. R. 6 Ex. 269; *Belfast Banking Co.* v. *Hamilton*, 12 L. R. Ir. Q. B. 105.

such consent divulge or disclose any of the secrets, concerns, or affairs of the sd business or practice.

Salary. 3. The sd A. & B., or the survor of them, shl pay to the sd C., while he shl remain in their or his service, & duly pform the agrmts on his pt hrin contd, a salary of £—— p.a., & so in proportion for any less period than a yr, by eql [monthly] paymts on the —— day of ——, the first paymt thof to be made on the —— day of ——.

Absence from unavoidable cause. [4. In case of the absce of the sd C. from the service of the sd A. & B., or the survor of them, owing to sickness or other unavoidable cause durg a continuous period of more than —— days, the sd A. & B., or the survor of them, may if they or he think fit appt a substitute for the sd C., & may remunerate him out of the salary [& share of profits] hby provd for the sd C.]

Absence without leave. [5. The sd C. shl pay the sum of £—— as liquidated damages to the sd A. & B., or the survor of them, for every day durg wch he shl absent himself from their or his service witht their or his consent for any reason other than sickness or other unavoidable cause.]

Add Clauses givg C. a share in gross or net profits—declarg that no ptnp is created,—& providg C. with board & lodging, if so intd. See Clauses 4, 6, *&* 7 *of Precedent V.*

Termination on notice or dissolution of partnership. 6. The engagemt of the sd C. may be terminated at any time after the —— day of ——, by eir pty, on givg to the other pty —— calr months' notice in writg, expirg at any time after such day, or leavg such notice addressed to such other pty at the surgery, or place of business, of the sd A. & B., or the survor of them: And the engagemt of the sd C. shl also cease in the event of the dissolon at any time of the ptnp of the sd A. & B. orwise than by death.

Not to practise in district (*b*). 7. The sd C. shl not at any time, while he shl remain in

(*b*) That an agreement of this kind in restraint of trade must be limited as to space, see the note to the Precedent of a Bond not to carry on trade within certain limits, *infra*. In this clause, as well as in the rest of the agreement, the possibility of a dissolution of the partnership between A. and B. has to be considered; see *Palmer* v. *Mallet*, 36 Ch. D. 411. That Agreement in restraint of trade.

the service of the sd A. & B., or the survor of them, or within —— yrs after he shl have left such service, follow, use, or carry on at —— afsd, or within —— miles thof, the profession, practice, or business of a physician, surgeon, accoucheur, or apothecary, eir in his own name, or in the name or names of any other pson or psons, & eir directly or indirectly, And shl not durg such period, enter into the service of any pson or psons other than the sd A. & B. as assistant, or orwise in, or in relon to, any such profession, practice or business as afsd within the limits afsd, & shl not durg the period afsd endeavour or attempt, directly or indirectly, to induce any pson or psons to cease from employg the sd A. & B., or the survor of them, in the way of their or his profession, practice, or business, or to induce any pson or psons within the limits afsd, so to employ any pson or psons other than the sd A. & B., or one of them. In wits, &c.

X.

AGREEMENT *between a* Manufacturer *and a* Traveller *with* Provision *for an* ultimate Partnership.

Parties, A., of, &c., manufacturer (hinafter called the employer), 1. B., of, &c., commercial traveller (hinafter called the traveller), 2. WHBY IT IS MUTUALLY AGRD as follows:—

Engagement as traveller for a term.

1. The traveller shl enter into the service of the employer as traveller for him in the business of a —— manu-

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an unqualified practitioner cannot enforce such an agreement against a former assistant, see *Davies* v. *Makuna*, 29 Ch. D. 596. The benefit of such a covenant is assignable, and would pass under a sale of the goodwill; *Jacoby* v. *Whitmore*, 32 W. R. 18.

As to an agreement of this kind where the employé is an infant, see *Evans* v. *Ware*, [1892] 3 Ch. 502.

facturer, carried on by him at —— afsd, for the period of —— yrs from the —— day of ——, 18—, subjt to the genl control of the employer.

Traveller to devote whole time.

2. The traveller shl devote the whole of his time, attention, & energies to the pformce of his duties as such traveller, & shl not, eir directly or indirectly, alone or in ptnp, be connected with or concerned in any other business or pursuit whatsr, durg the sd term of —— yrs.

To keep accounts.

3. The traveller shl, subjt to the control of the employer, keep pper books of acct, & make due & correct entries of the price of all goods sold, & of all transons & dealgs of & in relon to the sd business, & shl serve the employer diligently & accdg to his best abilities in all respts.

Salary.

4. The fixed salary of the traveller shl be the sum of £—— per week for the first yr, payable by the employer weekly from the commencemt of the sd service on the —— day of ——, & on every succeedg Saturday, & £—— per week for the second yr, & £—— per week for the third yr, payable weekly in like mner, from the commencemt of such respive yrs.

Commission.

[5. The traveller shl also be pd in addon to such fixed salary a commission at the rate of £—— p.c. upon the entire business returns of the employer in London & the suburbs, incldg thrin a circuit of —— miles' radius measured from the General Post Office, St. Martin's-le-Grand.]

Payment of commission.

[6. The amt payable to the traveller in respt of his commission shl be ascertained & pd to him by qtrly paymts, at the end of each period of three calr months from the commcemt of the sd service, & in the event of the death of eir of the sd pties the sd commission shl be computed & pd up to the day of such death.]

Travelling expenses.

7. The reasble travellg expses & hotel bills of the traveller incurred in connon with the business of the employer shl be pd by the employer [borne by the sd pties in eql moieties], & the employer shl from week to week pay to the traveller [one half of] the sd travellg expses & hotel bills in addon to his fixed salary. The employer shl provide a horse &

carriage for the use of the traveller, & in the event of any damage thto, the loss shl be borne by the pties hto eqlly.

Partnership at the end of term.

[8. At the expiron of the sd period of —— yrs, the employer shl take the traveller into ptnp with him in his sd business, for the term of —— yrs from such expiron if both pties shl so long live, & give him one eql fourth share of the net gains & profits of the sd business for the succeedg period of —— yrs, & one eql third share thof after that term, the employer providg the requisite capital for carryg on the sd business, & a pper deed of ptnp shl be entd into betn the sd pties, any question as to the terms whof shl be settled by arbitron under the clause hinafter contd.]

Arbitration.

[9. *Arbitron clause.* *See* Arbitron.] In wits, &c.

XI.

AGREEMENT *under* Seal *between a* Firm *of* Traders *and an* Agent *for the* Sale *of* Goods. Provisions *for* Payment *of* Commission, *for determining* Agency, *and for restraining* Agent *from carryiny on a similar* Business, *and other* Clauses. *A* Full *form.*

Parties.

THIS INDRE made the —— day of —— betn A., *agent* (hinafter called the agent) of the one pt, & B., C., & D., *ppals,* carryg on business in ptnp togr as ——, under the style or firm of B. & Co., at, &c., *or,* "& Messrs. B. & Co., &c." (hinafter called the ppals), of the other pt. Whas the agent has agrd to become the agent of the ppals in London for the sale of —— manufactured or supplied by them upon the terms & in mner hinafter mentd: NOW THIS INDRE WITNETH, that it is hby covtd & agrd by & betn the sd pties hto as follows:

Recital.

Mutual covenants.

Firm to supply goods.

1. The ppals shl, from time to time durg the term of —— yrs from the day of the date hof (if the agent shl so

long live), [ship], consign, & supply at their own costs & chges to the agent with as little delay as may be after they shl have reced from him a notice or order in writg for the same (unless they shl be prevented by some just & sufft cause), such quantities & descriptions of —— or other goods or merchandise wch are now, or shl for the time being be manufactured or dealt in by the ppals, as the agent shl require, *or*, "as will keep up a stk in the hands of the agent to the value of £——."

To be disposed of by agent.

2. The agent shl, durg the term afsd, rece all such goods & merchandise as shl be consigned or supplied to him by the ppals as afsd, & shl use his best endeavours to sell & dispose of the same to the best advantage, & for the best prices that can be obtained for the same, not being less than such prices, if any, as may from time to time be fixed by the ppals, & eir for ready moy or to psons of good credit: And shl in the meantime keep the same deposited in warehouses or other pper places, & shl twice in every yr, as hinafter mentd, duly acct with the ppals for, & pay over or remit to them all moys, bills, notes, & secs, wch shl have been reced by, or come to the hands of the agent, from or in respt of the sale or disposon of the sd goods or merchandise, after deductg the expses & allowces & other dedons hinafter mentd.

Proceeds to be remitted half-yearly.

Provision for omission to supply goods.

[3. In case the ppals shl at any time durg the subsistce of this agrmt from any cause whatever, fail or omit to supply the agent with such goods or merchandise as afsd within —— weeks after receivg a notice or order in writg from him for the same, the agent may thrupon pchase or obtain from any other pson or psons such goods or merchandise as he shl require, & wch the ppals shl so have failed to supply: Provd that the agent shl duly acct, at the times & in mner hinafter provd, for all the net profits to arise from the sale thof, after deductg the first cost or price of the same, & expses, & such other dedons & allowces as hinafter mentd.]

Expenses.

4. The ppals shl allow or pay to the agent so long as he shl continue to be their agent under this agrmt, all reasble

expses for carriage or delivery of the sd goods or merchandise, & for books, stationery, & postage, & all other reasble & customary expses attendg the sale thof, or orwise incurred by him in respt of the premes [save as hrin orwise provd]:

Commission. And shl also allow or pay him a commission or salary at the rate of £—— p.c. upon the [net] proceeds wch shl arise from the sale of all such goods or merchandise as afsd [after deductg expses], such commission to be chgeable upon moys actually reced only, & not upon outstandg debts: [And in case such commission shl, upon the makg up of any half-yrly acct as hinafter mentd, be found to amt to a less sum than £—— for the precedg half-yr, then the agent shl be entled to retain or be pd such a further sum in addon to the sd commission as will make the same up to such sum

Lien. of £——]: And it is hby agrd that the commission & allowce afsd, & all sums of moy whatsr wch may from time to time be or become due or owg from the ppals to the agent, shall be a lien or chge (*a*) upon all goods, merchandise, & ppty of the ppals, wch shl, for the time being, be in the posson or custody of the agent.

Clerks. 5. The agent shl, out of his sd salary or allowce, provide & pay all clerks & assistants who may be required by him for the managemt of the sd agency business.

Accounts 6. The agent shl keep all usual & pper books of acct of & concerng all goods & merchandise reced by him from the ppals [or pchased or obtained by him from any other pson or psons under clause 3], & the parlars of the sales thof, & of all sums of moy, bills of exchange, & other secs reced by him, & of all credit given on acct of any such goods, & of all other mres & transons concerng the premes, & the sd books & accts, & all bills, notes, secs for moy, lres, & other writgs relatg to the mres afsd in the posson or under the control of the agent, shl be carefully preserved

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(*a*) That this will not make the document a bill of sale within the Act of 1882, see *Morris* v. *Delobbel-Flipo*, [1892] 2 Ch. 352. See as to bills of sale the note in Vol. II., Mortgages.

by him (damage by fire, or other inevitable accident only excepted) & shl at all reasble times be open to the inspon of the ppals, or any member of their firm, or their agents, who shl have full liberty to make copies or extracts of or from the same or any of them. Inspection.

7. The sd pties shl, on the —— day of —— next, & thrafter durg the continuce of this agrmt, on the —— day of —— & the —— day of —— in every yr (unless prevented by sickness or other unavoidable cause, & then as soon as may be after the removal of such cause), settle accts respting the sale & disposon of the sd goods & the other mres afsd. [And upon the settlemt of accts, intt at the rate of £—— p.c. p.a. may be chged by or agst the agent upon all unpd balces, & for the ppose of such half-yrly settlemt of accts a full & parlar statemt in writg shl previously to every such day as afsd be prepared by the agent shewg all rects & paymts & other dealgs & transons concerng the premes, & every such acct or statemt, when approved & signed by the sd pties, shl be bindg upon them & every of them, & shl not aftwds be opened unless some manifest error or omission shl be discovered thrin within the space of twelve calr months thrafter, in wch case the same shl be rectified.] Settlement of accounts.

8. The agent shl on the first day of every month transmit to the ppals a statemt in writg of the goods wch may have come to his hands & of all orders reced by him, & the parlars of all sales & other transons wch shl have taken place durg the precedg month. Monthly statements.

9. The agent shl accept & duly pay all such bills of exchange as may be drawn upon him by the ppals, to the amt of the balce he may have in hand, on havg three days' previous notice given to him thof. Agent to accept bills.

10. The agent shl not at any time witht the consent in writg of the ppals assn, transfer, or in any mner make over the sd agency or this psnt contract to any pson or psons whomsr: And the agent, his clerks, agents, & servants, shl not, nor shl any of them, durg the continuce of the sd agency, witht such consent as last afsd, directly or in- Agency not to be assigned.

directly, sell or dispose of any —— or other goods or merchandise of the description afsd, for or on acct of the agent or any pson or psons whomsr, other than the ppals.

Agent not to carry on other business of the same kind.

The agent, his clerks, agents, & servants, shl not, nor shl any of them, durg the continuce of the sd agency, witht such consent as afsd, directly or indirectly, buy, sell, or deal in ——, or any of the goods or articles wch are now or shl for the time being be usually dealt in by the ppals, or carry on the business or trade of, &c., [carry on any business or trade whatsr,] for or on acct of the agent or any other pson or psons whomsr, other than the ppals [but the agent shl devote his whole time & attention to the sd agency business]:

Or, any other business.

Principals not to employ any other agent in same place.

And the ppals, their clerks, servants, & agents, shl not, nor shl any of them, durg the period afsd, witht the consent in writg of the agent, supply any such goods or merchandise as afsd, whether for resale or orwise, to any pson or psons whomsr, who shl reside or carry on business in the town of —— afsd, or within the distce of —— miles from, *some public bldg or other place in the town*, other than the agent.

Limit as to credit to be given.

11. The agent shl not give credit to any pson or psons whomsr for a longer period than ——, nor for any goods or merchandise exceedg the value of £——, witht the consent in writg of the ppals, & shl not give credit for any goods or merchandise to any pson or psons to whom they shl have forbidden him to give credit.

Agent not to compound debts, &c.

12. The agent shl not, witht the consent of the ppals, rele or compound any debt, claim, secy, or obligon relatg to the premes, nor abandon or compromise any action, suit, or other pcdg for compellg the paymt or satisfon of any such debt, claim, or obligon, or realisg or enforcg any such secy as afsd, nor exte nor do any instrumt or thing whby any such debt, claim, secy, or obligon may or might be dischged, diminished in value, or prejudicially affected, until the same shl have been fully pd or satisfied.

To obey directions of principals.

13. The agent shl at all times durg the continuce of the sd agency obey & observe all reasble dirons & instrons wch

may be given to him by the ppals, touchg the sale or disposon of the sd goods, or orwise relatg to the premes, & in the absce of special instrons shl act in such mner as he shl deem most beneficial to them.

To deliver up goods, &c., on winding up of agency.

14. The agent shl, upon the final windg up of the sd agency business, deliver up to the ppals all such of the goods & merchandise afsd, as shl remain unsold, & also all books & accts wch shl have been kept by the agent as afsd, & all documts & writgs relatg to the mres afsd, wch shl be in his posson or power.

Power to terminate agency.

15. It shl be lful for eir the ppals, or the agent, at any time durg the sd term of —— yrs to terminate the sd agency (*a*) by givg —— calr months' notice in writg to the other pty, or leavg such notice at, or sending the same by post or orwise to the usual or last known place of abode or business of such pty addressed to him or them: [Provd that in case eir of the sd pties shl at any time wilfully neglect or refuse to observe or pform any of the agrmts or stipulons afsd it shl be lful for the other pty to terminate the sd agency upon givg one week's notice in writg to him or them, or leavg or sendg the same as afsd.] And any notice hinbfe required to be given to the ppals may be addressed to the sd firm by its then name or style, or to any member thof, & upon the expiron of the period of any such notice as afsd, the sd agency shl accdly absolutely cease, & the accts of the sd business shl thrupon be adjusted & settled betn the sd pties up to the day on wch such notice shl have expired, in the same mner as if the sd agency had expired by lapse of time.

Agent not to be answerable for loss.

16. The agent shl in nowise be ansble for any loss or damage wch may happen to any such goods or merchandise as afsd, or wch may orwise be incurred in or about the mres afsd, unless the same shl be occasioned by his wilful neglect or default.

(*a*) See other provisions for determining agreements, *ante*, Precedents V. and VII.

Agreement not to be affected by change in firm.

17. THIS agrmt shl not be affected by any change wch may take place in the firm of the ppals by the death or retiremt of any member or members thof, or the admission of any new member or members, or any alteron in the name or style of the sd firm or orwise, so long as the sd psnt members thof, or any of them, shl continue ptners or a ptner thrin.

Power of attorney to agent (*a*).

18. FOR further effectuatg this agrmt, the ppals do hby appt the agent to be the atty of the ppals & of the psons or pson for the time being constitutg their firm or carryg on the sd business, for them or him, & in their or his names or name to demand, sue for, recover & rece, & give effectual rects & dischges for all such sum or sums of moy as shl be due from any pson or psons in —— or elsewhere, for or on acct of any goods or merchandise sold by the agent as afsd, & genlly to do all such acts & things as may be necy or pper in relon to the mres afsd (but subjt nevs to the stipulons & agrmts hinbfe contd as to compromisg claims & orwise), with power to the agent to appt a substitute or substitutes under him for any of the pposes last afsd, or for any mres relatg to the sd agency business, with such powers as he shl think fit, & such apptmt at pleasure to revoke, & the ppals hby agree to ratify & confirm whatsr the agent or his substitute or substitutes shl lfully do or cause to be done in & about the premes.

Arbitration.

19. IN case any question or dispute shl at any time durg the continuce of the sd agency or aftwds arise betn the agent, his exs or ads & the ppals or their firm for the time being, with respt, &c.,—— *Arbitron clause.* *See* ARBITRON. IN WITS, &c.

(*a*) See, also, ATTORNEY, POWERS OF.

XII.

GUARANTEE *to* BANKERS (*b*). VARIATIONS *where the* PRINCIPAL DEBTORS *are a* FIRM.

To Messrs. ——.

In consn of your [openg an acct with &] makg advces or orwise givg credit (*c*) to A., of, &c., [& B., of, &c., carryg on business at, &c., under the style or firm of A. & Co] I hby guarantee to you the paymt of all moys wch [are now (*d*) or] shl at any time be due to you from the sd A. or his repves [A. & Co] on the genl balce of his [their] acct with you not exceedg £—— with intt thron at the rate of —— p.c. p.a. from the time of notice requirg paymt of the amt hby guaranteed being given as hinafter provd (*e*): And I Guarantee to be continuing.

(*b*) See also the form of a bond to secure a banking account, *infra*, BONDS.

(*c*) The importance of correctly stating the consideration (one of many instances of the strictness with which suretyship agreements are construed in favour of the surety), is illustrated by *Burton* v. *Gray*, 8 Ch. 932, where a guarantee expressed to be given in consideration of the bankers lending the principal debtor £1,000 for seven days, was held to fail by reason of this condition not having been strictly fulfilled, although the debtor had within the seven days been allowed to overdraw his account to an amount approaching £1,000. If the consideration is the forbearance of the creditor to sue, this will be good if time is in fact given, although there is no express contract to do so; *Crears* v. *Hunter*, 19 Q. B. D. 341. As to stating consideration.

(*d*) See *Morrell* v. *Cowan*, 7 Ch. D. 151.

(*e*) See *Hobson* v. *Bass*, 6 Ch. 792; *Ellis* v. *Emmanuel*, 1 Ex. D. 157. The following is a full form, which may be substituted, *mutatis mutandis*, for the clause in the text to this point:—

"In consn, &c., I, the undersigned B., of, &c., hby guarantee to you the paymt of all moys wch are now or shl from time to time be due to you from the sd A. or his repves, alone, or jtly with any other pson or psons, or Co, either on acct current or for moy advced or pd, or in respt of bills, drafts, notes, or other negotiable secs made, drawn, accepted, advised, endorsed, or pd by you or on your acct for the sd Full form of guarantee.

declare that this guarantee shl be a continug guarantee (*a*) to the extent at any time of £——, & shl not be considered as wholly or partially satisfied by the paymt or liquidon at any time or times hrafter of any sum or sums of moy for the time being due upon such genl balce as afsd, but shl extend to cover & be a secy for all future sum & sums of moy at any time due to you thron within the limit afsd, notwg any such paymt or liquidon: And I further declare that you may grant time or other indulgce to or compound with the sd A. or his repves [A. & Co], or any pson or psons or Co liable on any bill, note, or other secy or guarantee held by you witht affectg this guarantee, & that all divds, composons, & paymts reced by you from the sd A. [A. & Co], or any other pson or psons or Co so liable, or his or their este, shl be taken & applied as paymts in gross, witht any rt on the pt of me or my repves to stand in your place in respt of, or to claim the benefit of any such divds, composons, or paymts, or any secy held by you until you shl have reced the full amt of all your claims agst the sd A. or his repves [A. & Co] wch are covered by this guarantee, & that this guarantee shl apply to & secure any ultimate balce wch shl

Power to give time and compound.

A. or his repves alone or jtly as afsd, & also of all moys wch you may from time to time be or become liable to pay in respt of any bills, letters of credit, circular notes, or any other dealg or transon on acct or for the accommodon or benefit of the sd A. or his repves, alone or jtly as afsd, inclusive of intt, commission, & other usual bankers' chges, & all costs & expses incurred by you in respt of the premes, or this guarantee, & inclusive also of intt at any rate not exceedg (unless orwise agrd) the Bank of England rate for the time being, or five p.c. p.a. if the Bank rate shl be below that rate, to be calculated with half-yrly rests, accdg to the usual custom of bankers, although the relon of customer & banker may have ceased, so as the liability of me or my repves hrunder shl not exceed at any one time the sum of £——, with intt, &c., *as in the text.*"

(*a*) See *Ellis* v. *Emmanuel*, 1 Ex. D. 157.

remain due to you within the limit afsd, & that you may enforce this guarantee, notwg that any bills or other instrumts covered by it may be then in circulon or outstandg (*b*): And I further declare that this guarantee shl not be affected by my death (*d*), but shl remain in force until one calr month after notice in writg to determine or discontinue the same shl have been given to you by me or my repves, & shl continue to be bindg, notwg any changes wch may from time to time take place in the ptners [in the sd firm of A. & Co or] in your firm: And I further agree that any acct settled or stated by or betn you & the sd A. or his repves [A. & Co], or admitted by [him or] them, may be adduced by you & reced as conclusive evidce agst me & my repves of the balce or amt thby appearg due from the sd A. or his repves [A. & Co] to you, & shl not be disputed or questioned by me or my repves: And I further agree that the amt hby guaranteed shl be due & payable to you at the expiron of —— days after notice requirg such paymt shl have been delivered or sent through the post by registered letter in the usual way by you or your solors to me or my

Death of guarantor or change in partners not to invalidate guarantee (*c*).

Account settled between customer and bank to be binding.

Amount guaranteed to be due on notice.

(*b*) See as to this clause, *Midland Banking Company* v. *Chambers*, 7 Eq. 179, 4 Ch. 398; *Hobson* v. *Bass*, 6 Ch. 792; and as to companies, see *Gray* v. *Seckham*, 7 Ch. 680; *Exp. National Provincial Bank*, 17 Ch. D. 98; and the Judicature Act, 1875, s. 10.

(*c*) In the absence of agreement to the contrary, the guarantee would be revoked as to any future transactions by a change in the constitution of the firm of A. & Co., or of the firm of bankers; Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 18.

(*d*) As to the effect of the guarantor's death, see *Harriss* v. *Fawcett*, 15 Eq. 311, 8 Ch. 866; *Lloyd's* v. *Harper*, 16 Ch. D. 290. As to the appropriation of payments made by the debtor after the death of the guarantor, see *Re Sherry*, 25 Ch. D. 692. As to the right to contribution between co-sureties, see *Exp. Snowdon*, 17 Ch. D. 44, following *Davies* v. *Humphreys*, 6 M. & W. 153; and as to the difference between joint and several guarantees as regards the right to contribution between the guarantors, and the effect of the release of one of them by the creditor, see *Ward* v. *National Bank of New Zealand*, 8 App. Cas. 755. And on the general subject of the law of guarantees and suretyship, see the notes to *Rees* v. *Berrington*, and *Dering* v. *Earl of Winchelsea*, in White & T. Lead. Cas. Eq.; Dav. Prec. Vol. II., part 2, p. 502, note; Goodeve on Personal Property, 176 *et seq.*

As to law of guarantee and suretyship.

repves witht the necessity of namg them. As WITS my hand this —— day of ——.

XIII.

GUARANTEE *by* DIRECTORS *of a* COMPANY *to* BANKERS *for limited amounts* (*a*).

To THE —— BANK LIMD.

Guarantee. IN conson of your agreeg to grant to the X. Co Limd., at our request, a credit overdraft to the extent of £——, we, the undersigned, hby guarantee to you the paymt of all moys wch shl at any time be due from the sd X. Co to you on the genl balce of their acct with you (such balce to include all intt, commission, & other chges & expses wch you may in the course of your business as bankers chge in respt of any advces or discounts made to them or on their acct, or for keepg their sd acct, with you), & we hby agree that this guarantee shl be a continug guarantee to the extent at any one time or times hrafter of any sum or sums of moy for the time being due upon such genl balce as afsd: AND further that this guarantee shl be in force & subsistg whether the whole of the sd sum of £—— shl be actually advced by you or not (*b*) *Power to give time, &c., as in last form.* PROVD always & we exply stipulate that we shl resply be liable on this guarantee only to the extent of the sums set opposite to our respve names in the schdle hto: AND further that if, durg the continuce of this guarantee, any of us shl die or shl cease to be a Diror or Dirors of the sd X. Co. Limd, & if that Co shl be unable to substitute a guarantor or guarantors in his or their place who shl be satisfactory to you, then the sd Co may pay to you the amt wch in the sd schdle shl be set opposite to the name or names of the pson or

Limit of liability.

Provision for death, &c., of any guarantor.

(*a*) See notes to the last Precedent.
(*b*) See *Burton* v. *Gray*, 8 Ch. 932.

psons who shl so die or cease to be a Diror or Dirors as afsd, & such paymt shl be accepted by you in full satisfon of all claims agst such pson or psons in respt of this guarantee. Dated, &c.

The Schdle.

A. £——,
B. £——, &c.

XIV.

AGREEMENT *between* DIRECTORS *of a* COMPANY *in respect of a* GUARANTEE *given by them for the* COMPANY (*c*).

AGRMT made, &c., betn *six pties:* WHAS by a guarantee bearg even date hwith the sd sevl psons pties hto have guaranteed to the —— Bank certn sums set opposite to their respive names in the schdle to the sd guarantee as secy for the X. Co, of wch the pties hto are the psnt Dirors: AND WHAS with a view to provide for the contingency of their ceasg to be Dirors of the sd X. Co, they have agrd betn themselves in mner hinafter appearg: NOW THESE PSNTS WITNESS, that each of the sd pties hto doth hby agree with the others of them jtly & sevlly as follows:— Recital of guarantee. Agreement

1. IF at any time durg the continuce of the sd guarantee, any one or more of the pties hto shl die or shl (except by ceasg to hold the necy qualificon as Diror, or in consequce of anything done or permitted by him or them contrary to his or their duty) cease to be a Diror or Dirors of the sd X. Co, then the other pties hto, or such of them as shl for the time being be Dirors of the sd X. Co, will forthwith procure the sd Bank to rele the sd pty or pties so dying or ceasg to be a Diror or Dirors, & his or their estes & for release of any guarantor dying or ceasing to be director

(*c*) See last Precedent.

effects, eir by procurg the sd Bank to accept a substitute or substitutes as guarantor or guarantors in his or their place, or by paymt to the sd Bank of the sum set opposite to the name or names of such pson or respive psons in the schdle to the sd guarantee: PROVD ALWAYS that the liability to procure such rele shl not arise until paymt to the sd X. Co by the repves of the pson or psons so dying, or by the pson or psons so ceasg to be a Diror or Dirors of the amt for the time being uncalled or unpd upon the shares standg in the name or names of the respive pson or psons so dying or ceasg to be a Diror or Dirors, if the then existg Dirors of the sd X. Co shl require such paymt to be made. IN WITS, &c.

On payment up of his shares.

XV.

AGREEMENT *between an* AUTHOR *and a* PUBLISHER *for* SALE *of* COPYRIGHT *and* PUBLICATION *of a* BOOK.

PARTIES, A., *author*, 1. B., *publisher*, 2.

Sale of copyright. WHAS the sd A. has written a book to be entled ——: NOW IT IS HBY MUTUALLY AGRD that the sd B. shl pchase the copyright of the same on the follg terms:—

Expenses. 1. THE sd B. shl bear the whole expse & risk of the paper & printg the sd book, & the publicon thof.

Payment to author. 2. THE sd B., his exs, ads, or assns, shl pay to the sd A. the sum of £—— for the first edon of the sd book, when —— copies shl have been sold, & for the second & every future edon the sum of —— to be pd three months after the day of publicon, no edon to exceed —— copies & —— copies of each edon to be supplied gratis to the author, & any number of copies at trade price.

New editions. 3. THE sd A. shl revise any new edon of the sd work, & correct the proofs.

Provision 4. IN case of the death of the sd A., or his inability to

edit the sd work, the sd B., his exs, ads, or assns, shl be at liberty to employ such editor as he or they may think fit, & after deductg the paymts to such editor, the balce, if any, of the sd sums of £——, or £——, as the case may be, shl be pd to the sd A. or his repves. for death, &c., of author

5. In case —— copies of the first edon of the sd book shl not be sold within —— yrs from the date of publicon, the sd B. shl be at liberty to waste the same, & shl not be liable to pay the afsd sum of £—— to the sd A. In wits, &c. Power to waste first edition.

XVI.

AGREEMENT *between* Owners *and* Lessees of Two Adjoining Properties *respecting the interference of* New Buildings *with* Ancient Lights (*a*).

Parties, A. 1, B. 2, C. 3. Whas the sd A. is seised in fee of a certain plot of land in & on the south side of X. Recital of A.'s title to land

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(*a*) See the Prescription Act, 2 & 3 Will. 4, c. 71, ss. 3 & 4; Shelford R. P. Stat. pp. 11, *et seq.*; Tudor, L. C. Conv., notes to *Sury* v. *Pigot*, p. 154. Frequently a small nominal rent is agreed to be paid for permission to continue an encroachment with the object of preventing an easement from being acquired. The payment of rent under a *parol* agreement of this nature is not an interruption of the user under s. 3 of the above Act (*Plasterers' Co.* v. *Parish Clerks' Co.*, 6 Ex. 630), and where there is an agreement in writing for payment of the rent, the non-payment of the rent for twenty years may afford some evidence that the agreement has been put an end to (per James and Thesiger, LL.JJ., *Bewley* v. *Atkinson*, 13 Ch. D. 293, 296); but the payment of a rent by way of acknowledgment, though not essential, is useful as a means of ensuring that the tenant for the time being in possession shall have notice that the enjoyment of the easement is permissive only; for which purpose the demand of payment should be regularly made on the person in actual occupation. Where either property is in lease, the lessor is sometimes made a party to the agreement; if this is not done, notice of it should be given to him; and in general it is desirable that notice should be endorsed on the lease, and on one or more of the leading title- Agreements as to lights.

formerly the site of buildings.

court, in the parish of, &c., formerly the site of houses no'd &c., in X. court, but wch houses have lately been pulled down, and the sd A. is also tenant, under an agrmt for a lease for a term of —— yrs from the —— day of ——, of anor plot of land in & on the south side of X. court afsd, formerly the site of houses no'd &c., in X. court afsd, wch houses have also lately been pulled down: And whas the backs of the sd houses in X. court abut on the backs of other houses situate on the north side of Y. street, in the sd parish of —— (the two ppties being divided by a divon or pty fence wall), wch houses in Y. street, with other ppty, are held by the sd B. (upon certain trusts under wch the sd C, is absolutely entled to the beneficial intt thrin), under a lease for the residue of a term of —— yrs commencg on the —— day of ——, & are underlet ptly upon lease & ptly to yrly tenants: And whas the sd A. has pulled down the sd houses on the south side of X. court, with the view of erectg on the site thof other bldgs of greater height & magnitude, & he intends to cover over or ptly to cover over the site of the back yards of the sd houses so that (as alleged by the sd B., though not admitted by the sd A.), the ancient lights of the sd houses in Y. street wd be interfered with, & the free access of light & air thto (as htofore) wd be materially obstructed: And whas plans and elevons of the houses so pulled down by the sd A. & of the new bldgs & improvemts so as afsd to be erected & extd by the sd A. have been submitted to Mr. —— the surveyor of the sd B., & signed by such surveyor & by Mr. —— the architect of

B. s title to adjoining land.

Proposed new buildings by A.

Plans agreed upon.

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deeds of both tenements. As to constructive notice of an agreement granting an easement, see *Allen* v. *Seckham*, 11 Ch. D. 790. As to the effect of rebuilding on the same or an altered site as regards the right to ancient lights, see *Heath* v. *Bucknall*, 8 Eq. 1; *Staight* v. *Burn*, 5 Ch. 163; *Aynsley* v. *Glover*, 18 Eq. 544; *National, &c., Co.* v. *Prudential Assurance Co.*, 6 Ch. D. 757; *Ecclesiastical Commissioners* v. *Kino*, 14 Ch. D. 213; *Newson* v. *Pender*, 27 Ch. D. 43; *Bullers* v. *Dickinson*, 29 Ch. D. 155; *Greenwood* v. *Hornsey*, 33 Ch. D. 471; *Pendarves* v. *Monro*, [1892] 1 Ch. 611; 29 Sol. J. 62. As to the effect of a verbal agreement to grant an easement where there has been part performance, see *McManus* v. *Cooke*, 35 Ch. D. 681.

the sd. A., & annexed to this agrmt, & the plans & elevons of the sd new bldgs & improvemts so signed are hinafter for brevity referred to as "the sd plans": AND WHAS for obviatg any applicon by the sd B. for restraing the sd A. from pcdg with the sd proposed bldgs & improvemts, & for fixg the terms on wch the consent of the sd B. to the exon thof is intd to be given, the sd pties hto have entd into the arrangemt hinafter appearg: NOW in conson of the premes the sd A. & the sd B., with the consent hby testified of the sd C., HBY MUTUALLY AGREE as follows: Introductory recital.

1. THE sd A. shl not, by reason of the eron & exon of the proposed bldgs & improvemts, acquire as agst the sd B. or his sequels in right any further or more extensive rt to the access & use of light to & for such bldgs than he, the sd A., is entld to in respt of the sd houses & bldgs lately standg on the south side of X. court afsd, & any access or use of light to or for the sd proposed new bldgs more extensive than that wch was enjoyed as of right to or for the sd houses & bldgs lately standg on the south side of X. court afsd, shl so far as regards the sd B. & his sequels in rt be deemed permissive & enjoyed by consent under this agreemt, so as to prevent the sd A. or his sequels in rt from havg any legal or equitable rt, claim, or remedy agst the sd B. or his sequels in rt, in respt of any obstron or detrimt to such addonal access or use of light, occasioned by any bldgs or improvemts upon, or other reasble use of the sd houses or any adjacent ppty of the sd B. A. not to acquire any more extensive right to light in respect of new buildings.

2. THE sd A. & his sequels in rt will not, in respt or under colour of his psnt or any future rts to the access or user of light or air, by any means seek to restrain or prevent the sd B. or his sequels in rt from doing or causg to be done, or bring any action for damages or institute or promote any other legal pcdgs in respt of his or their doing or causg to be done any of the things follg, & the sd A. (so far as depends upon him), hby authorises & consents to, & agrees that his sequels in rt shl authorise & consent to the doing of the same, that is to say:—*First*, erectg on the site A. to permit erection of similar buildings on adjoining land.

of the sd houses in Y. street, or any pt thof (not being within a distce of —— feet from the boundary wall of the two ppties), any bldgs not exceedg in height the bldgs proposed to be erected by the sd A. as shown on the sd plans. *Secondly*, coverg over & alterg the psnt back yard, sheds, & offices of the houses in Y. street, or the sites thof, or any pt thof, up to the sd boundary wall in the way in wch the back yards of the houses in X. court are intd to be covered over & altered as shown in the sd plans, or in any other way not more prejudicial, as regards the access of light & air, to the X. court ppty of the sd A.

Consent by B. to new buildings.

3. In conson of the sd agrmts on the pt of the sd A. the sd B. & his sequels in rt will not by any means seek to restrain or prevent the sd A. or his sequels in rt from erectg and extg the sd proposed bldgs and improvemts accdg to the sd plans, or bring any action for damages, or institute or promote any legal pcdgs in respt thof, but so far as depends on him he, the sd B., hby authorises & consents to the eron & exon of the sd proposed bldgs & improvemts accdg to the sd plans.

A. to give notice of agreement to persons claiming under him.

4. The sd A. & his sequels in rt will, by insertg notice of the stipulons hinbfe contd in favour of the sd B. & his sequels in rt, in leases & other munimts, & by such other reasble means as circes may require or admit (& as well in complice with any special reqt in that behalf on the pt of the sd B. or his sequels in rt as witht such special reqt), use his best endeavours to cause the sd stipulons to run with the sd X. court ppty, & bind all psons interested thrin as owners, lessees, occupiers, or orwise. In wits, &c.

XVII.

AGREEMENT *for* PREVENTING *the acquisition of an* EASEMENT *in respect of* NEW WINDOWS *overlooking a neighbour's land* (*a*). VARIATION *where one of the* PARTIES *is only a* LESSEE.

PARTIES, A., *one owner*, 1. B., *other owner*, 2. WHAS the sd A. is seised in fee simple of the house No. —— in —— Recital of title. Variation.

(*a*) See note to last Precedent. The following clauses are adapted to the case of one of the parties being only a lessee :—*Recite that A.* "is seised in fee simple of a piece of bldg ground situate, &c.," *and that B.* "is lessee for an unexpired term of —— yrs of an adjoing pce of ground on wch he has erected a house & other bldgs known as, &c., the windows whof overlook the sd ppty of the said A.," *& that* "the sd A. has threatened to obstruct the access of light & air to the sd house & bldgs of the said B. through or by means of the windows afsd. NOW in order to avoid any disputes IT IS HBY MUTUALLY DECLD AND AGRD betn the pties hto as follows :— Recitals. Lease to B.

1. The sd B. (so as to bind himself and his exs & ads, & his & their intt as lessees & the intt of all psons claimg through or under him or them by assignmt, underlease or orwise, but not so as to prejudice his or their lessors or to work a forfeiture of the sd lease), doth hby for himself & his exs, ads, & assns acknowe that the access of light & air to the sd house & bldgs through or by means of the windows afsd is had & enjoyed by him solely by the permission & sufferce of the sd A., & so that no easemt or rt in respt thof shl be acquired by prescription or orwise by him the sd B. his exs, ads or assns. Enjoyment of light and air to windows to be deemed permissive.

2. THE sd B., his exs, ads, & assns shl not assn or underlet the sd house & premes or allow his or their lease-hold intt thrin to expire or cease by surrender, forfeiture or orwise witht givg written notice thof to the sd A., his hrs or assns. Lease not to be assigned, &c., without notice.

street, in the parish of, &c., & the sd B. is seised in fee simple of the house No. —— in the same street; AND WHAS the sd A. has recently opened two new windows in his sd house overlookg the back yard of the sd house of the sd B.: NOW it is HBY MUTUALLY DECLD AND AGRD as follows :—

New windows opened by A.

Enjoyment of light to window to be deemed permissive.

1. THE sd windows shl be deemed to have been opened with the express permission & consent of the sd B., & the enjoymt hrafter by the sd A., his hrs & assns, or any pson or psons claimg under him or them, of the access and use of light or air to the sd house & premes belongg to him the sd A., by means of such windows shl be deemed to be with the express permission & consent of the sd B., his hrs & assns, to the intent that the sd A., his hrs & assns or any pson or psons claimg as afsd, shl not acquire any easemt or rt in respt thof.

Covenant to pay nominal rent as acknowledgment.

[2. THE sd A., his hrs & assns shl pay to the sd B., his hrs & assns by way of acknmt for the permission hby given to keep open the sd windows so long as this agrmt shl continue the yrly rent or sum of one shillg on the —— day of —— in every yr if demanded.]

Rescission.

3. EITHER of them the sd A. & B., or his hrs or assns, may at any time hrafter determine this agrmt by givg to the other of them, his hrs or assns, a notice in writg in that behalf. Such notice shl be sufft if given to the owner or occupier, or one of the owners or occupiers of the sd house and premes now belongg to the other of them, the sd A. & B. (not being a mere caretaker or servant), or to some pson claimg to be such owner or occupier, or one of such owners or occupiers, psonally, or if sent by post addressed to the owner or occupier of such last mentd premes, or some one of such owners or occupiers eir by name or orwise,

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Access of light and air not to be interrupted without notice.

3. THE sd A., his hrs & assns shl not obstruct or intercept the access of light & air to the sd house & bldgs of the sd B. witht givg three calr months' notice of his or their intention in that behalf to the pson in posson thof.

& provd in the latter case the rect thof shl be acknowed by such owner or occupier, or by some pson claimg to be such.

4. In the event of this agrmt being determined as afsd, the sd A., his hrs or assns shl forthwith at his or their own expse wall or block up the sd windows. In wits, &c. A. then to wall up windows.

XVIII.

AGREEMENT *between* Adjoining House-Owners *as to the* Continuance *of* Encroachments (*a*).

Parties, A., *owner of one house*, 1. B., *owner of other house*, 2.

Whas the sd A. is the owner of a house situate, &c., & the sd B. is the owner of a pce of land adjoing thto, on wch he has erected [is erectg] a house, the upper pt of the south wall of wch encroaches on the roof of the house of the sd A.; And the sd B. has affixed to the front of the sd house of the sd A. a pipe to carry off the water from the roof of his sd house: NOW it is MUTUALLY AGRD as follows:— Recital as to encroachments by B.

1. The sd encroachmts of the sd south wall of the house of the sd B. & of the sd pipe shl be deemed to have been made, & the continuce hrafter of such respive encroachmts shl be deemed to be with the express licence & consent of the sd A., to the intent that the sd B. or any pson claimg under him, shl not acquire any casemt or right in respt thof. Encroachments to be deemed permissive.

2. The sd B. shl at his own expse keep the sd pipe pperly cleansed & in good order, & shl make good, & compensate the sd A. for all damage wch may at any time be done to the house of the sd A. by water runng from the roof of the B. to repair and make good future damage.

(*a*) As to agreements of this nature, see 2 & 3 Will. 4, c. 71, s. 2, and above, p. 49, note.

house of the sd B., or by leakage or overflow from the sd pipe.

To remove encroachments on notice.

3. The sd B. shl pull down & remove the sd wall & pipe so far as the same resply encroach as afsd, & make good any damage occasioned thby to the house of the sd A., within 14 days after the sd A. shl have given or left at the sd house of the sd B. a notice in writg in that behalf, & every such notice shl be sufft although not addressed to any pson by name or description.

Agreement to bind owners for time being.

Notice to be endorsed on title-deeds.

4. The respive owners for the time being of the sd houses shl have the benefit of & be bound by this agrmt, & shl be deemed to be included in each article of this agrmt wherever the names of the sd A. & B. resply occur: And notice of this agrmt shl be endorsed on the convce to the sd B. of his sd pce of land, & on every future assurce of the sd house thron erected. In wits, &c.

XIX.

AGREEMENT *for* Apportionment *of* Rent *under* Lease, *where the* Reversion *of* Part *of the* Premises *has been sold to a* Public Undertaking *under the* Lands Clauses Act, 1845 (*a*).

Parties, A., lessor, 1. B., *a Public Board, pchasers*, 2. C., *lessee*, 3.

Apportionment of rents.

(*a*) See the Act, 8 & 9 Vict. c. 18, s. 119. Where the premises are conveyed by virtue of the Elementary Education Act, 1870, 33 & 34 Vict. c. 75, or the School Sites Acts, 1841 to 1851, 4 & 5 Vict. c. 38, 7 & 8 Vict. c. 37, 12 & 13 Vict. c. 49, 14 & 15 Vict. c. 24, the apportionment can be made under 12 & 13 Vict. c. 49, by agreement between the lessor or owner subject to the lease, the tenant, and the party to whom the conveyance is made, and when made is binding on all underlessees and other persons, whether parties to the agreement or not.

An apportionment of rent made on the severance either of the reversion or of the leasehold interest would not unless concurred in by him be binding, in the former case on the lessee, and in the latter on the lessor who would otherwise be entitled to have it made by a jury or other com-

Recite lease. And whas the inhance & reversion in fee-simple of & in the sd house & premes, No. —— afsd, pt of Recital of seisin.

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petent authority (*Bliss* v. *Collins*, 5 B. & Ald. 876), but such concurrence is usually dispensed with, as an agreement come to between the owners of the severed portions of the reversion or of the leasehold interest (as the case may be) is generally acquiesced in.

Sections 10, 11 and 12 of the Conv. Act, 1881, contain provisions (which are to a considerable extent merely declaratory of the previous law), applicable to leases made after the commencement of the Act, as to the effect of the severance of the reversionary or leasehold estate respectively on the rights of the parties. Section 10 provides, in effect, in case of the severance of the reversion, that the owners of the severed portions shall have the remedies for the recovery of the apportioned parts of the rent and the benefit of the lessee's covenants and condition of re-entry and other conditions (as to the old law, see *Mayor of Swansea* v. *Thomas*, 10 Q. B. D. 48); section 11 contains a provision, in the like case, for annexing the obligation of the lessor's covenants to the severed portions of the reversion; and section 12 provides in effect (in extension of 22 & 23 Vict. c. 35, s. 3) that in case of the reversion being severed by conveyance, surrender, or otherwise, or of the avoidance or cesser in any other manner of the leasehold interest as to part only of the land, every condition of re-entry or other condition shall be apportioned and remain in force in like manner as if the land comprised in each severed part, or as to which the term remains subsisting (as the case may be) had alone originally been comprised in the lease. Provisions of Conv. Act, 1881.

It has been decided in Ireland that a surrender or re-demise to the lessor of part of the premises in the lease had the effect of destroying the condition of re-entry under the doctrine as to the non-apportionability of conditions (see *Mortimer* v. *Shortall*, 1 Con. & Law., 417, 426, as to a surrender (a decision of Lord St. Leonards); *Lessee Delap* v. *Leonard*, 5 Ir. L. Rep. 287; 6 Ir. L. R. 473, as to a re-demise: referred to in Platt on Leases, Vol. 2, 333); and the same principle must, it is conceived, apply to the case of the lessor concurring in an apportionment of the rent and condition of re-entry on an assignment by the lessee of part of the property in the lease. If this be good law it is remarkable that there should not (so far as the writer is aware) be any English decision on the point, nor any precedent or hint in any of the works on conveyancing, as to the necessity for a defeazance in any such case to revive the condition of re-entry; and the case is not provided for by Lord St. Leonards' Act, 22 & 23 Vict. c. 35, s. 3. See as to the apportionment of conditions, Butl. Co. Litt. 202*b*, n. (2), 215*a*; 1 Wms. Saund. 302, ed. 1871; 1 Smith's L. C., notes to *Dumpor's case*, p. 43; and as to defeazances, see 3 Jarm. & Byth. by Sweet, 681—686. The defect, if it existed, is only partially cured by s. 12 of the Conv. Act, 1881, namely, in the case of the avoidance or cesser by surrender or otherwise of the term as to part of the land, and not in the case of a re-demise, or that Effect of the Act.

the sd premes comprd in the hinbfe recited lease, expectant upon the determinon of the term granted by the sd lease, is now vested in the sd B.: And whas the sd B. require for the pposes of, &c., vacant posson of the house and premes afsd, wch are delineated in the plan drawn in the margin hrof & thron coloured pink, the remr of the premes demised by the sd lease being coloured blue on the same plan: NOW IT IS HBY, psuant to the provons of the Lands Clauses Consolidon Act, 1845, AGRD AND DECLD betn & by the sd sevl pties hto of the first & third pts, for themselves resply, & for their respive hrs, exs, ads, & assns, on the one pt, & the sd B. for themselves, their succors & assns, on the other pt, That the sd yrly rent of £—— shl, from the —— day of —— be apportioned in mner follg; that is to say, the yrly rent of £——, pt of such yrly rent of £——, shl be the portion thof from that day payable in respt of the sd premes coloured pink on the sd plan, & the yrly sum of £——, the remr of the sd rent of £——, shl from the same day be payable in respt of the residue of the sd premes comprd in the sd lease, & wch are coloured blue on the same plan: AND IT IS HBY ALSO AGRD that the sd B. shl pay the costs of the sd A., as provd by the Lands Clauses Consolidon Act, 1845, & (*b*) also the sum of £—— for the costs & chges of his surveyor & solor of & attendg the negotion of these psnts. *Similar provon as to C.'s costs.* In wits, &c.

Recital of premises being required.

Agreement.

Costs.

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of the lessor concurring in an apportionment on an assignment by the lessee of part of the property; and the Act only applies where the lease was after the Act. As to the effect of the surrender of the lease of part of the premises upon the covenant for payment of rent, see *Baynton* v. *Morgan*, 21 Q. B. D. 101; 22 Q. B. D. 74.

(*b*) As to what costs are payable by B. without special agreement, see *Exp. Buck*, 1 H. & M. 519.

XX.

DEED *of* COVENANT *by the* OWNER *of a* PERPETUAL RENT-CHARGE *for* APPORTIONING *the same.* ENDORSED *on a* CONVEYANCE *of the lands subject to the rent-charge* (*a*).

Parties, the within named A., *owner of rent-chge*, 1.; the within named B., *owner of lands chgd*, 2. WITNETH,

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(*a*) The apportionment can be made by the Board of Agriculture (to which the functions of the Land Commissioners have been transferred by the Board of Agriculture Act, 1889, 52 & 53 Vict. c. 30) on the application of the persons interested in the land and the rent-charge under the Inclosure Act, 1854, 17 & 18 Vict. c. 97, ss. 10 to 14. See also as to apportionment in the case of lands taken under the Lands Clauses Consolidation Act, 1845, ss. 115-117; under the Church Building Acts, 14 & 15 Vict. c. 97, s. 27; 36 & 37 Vict. c. 50, s. 3; of commutation and enfranchisement rent-charges under the Copyhold Acts, 4 & 5 Vict. c. 35, ss. 50, 52, 55; 6 & 7 Vict. c. 23, ss. 4–8; and of drainage and improvement rent-charges, 9 & 10 Vict. c. 101, ss. 44, 45; 19 & 20 Vict. c. 9, ss. 8, 10; 27 & 28 Vict. c. 114, ss. 68-71. As to the apportionment of rent-charges.

By 22 & 23 Vict. c. 35, s. 10 (passed to remedy the inconvenient doctrine that the release of part of the land charged with a rent-charge operated as a release of the whole land), it was enacted that a release of part of the land charged shall not extinguish the whole rent-charge, but shall only bar the right to recover it out of the land released, "without prejudice nevertheless to the rights of all parties interested in the hereditaments remaining unreleased and not concurring in or confirming the release." The effect of these saving words has been held to be that where the owner of the rent-charge releases part of the land without the concurrence of the owner of the other part, the whole of the rent-charge is not extinguished, but only a proportionate part of it can be recovered against the owner of the unreleased portion of the land: *Booth* v. *Smith*, 14 Q. B. D. 318. The doctrine as to a release of part of the land extinguishing the rent-charge did not apply to a release of the land from part only of the rent-charge (Vin. Abr. "Rent," 504; 3 Cruise Dig. 301; Co. Litt. 148, referred to in Tudor's L. C., Conv., notes to *Clun's case*, p. 331); and the enactment above referred to does not and was not required to cover that case. An apportionment might therefore be effected by a release of each portion of the land from so much of the rent as is to be borne by the other portion; but it is better that it should be effected (as in this precedent) by way of covenant only (according to a plan which was in use to avoid the common law doctrine as to the effect As to the partial release of land from a rent-charge.

that for apportiong the within mentd yrly rent-chge of £50, the sd A. hby covts with the sd B., his hrs & assns, in mner follg (that is to say) :—

Apportionment of part of rent on property in first schedule.

1st. That so long as the clear yrly sum of £10, pt of the sd yrly rent-chge of £50, shl be duly & punctually pd by eql half-yrly paymts at the times at wch the sd rent-chge is payable, or within 21 days thrafter, as & for the portion of the sd rent-chge payable in respt of the land & bldgs descd in the first schdle hto, by the sd B., his hrs or assns for the time being entled to the same land, then & so often as the same shl happen the sd A. will not, nor shl his hrs, exs, ads, or assns at any time hrafter in case of the non-paymt of the sd rent-chge of £50, or any pt thof, distrain or enter on, or cause or procure any distress or entry to be made on the sd land descd in the sd first schdle, or any pt thof, or any bldg thron, or commce, carry on, or prosecute any action or other pcdg agst the owners, tenants or occupiers for the time being of the same land & bldgs, or any pt thof, or exercise or avail himself or themselves of any other powers or rts for recoverg or compellg paymt of the sd rent-chge of £50, or any pt thof, or in any wise interrupt or disturb the sd B., his hrs or assns, or his or their tenants in the posson

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of a release). It has been doubted whether an absolute covenant not to claim the rent against the land would not operate as a release (see Co. Litt. 147*b*. n ; but see Shepp. Touchstone by Preston, 345) ; but it seems clear that a conditional covenant, as in the text, could not so operate.

As to the remedies for recovering apportioned rent-charge.

A rent-charge may be apportioned between several owners without the consent of the owner of the lands, so as to keep alive the right of each owner to distrain for his part (*Rivis* v. *Watson*, 5 M. & W. 255 ; 2 Dart, V. & P. 1044 ; and as to the separate right of distress of each tenant in common of a rentcharge, see *Whitley* v. *Roberts*, McClel. & Y. 107) ; and the remedies for the recovery of a rent-charge by distress, or receipt of rents, or appointing a term, which are given by the Conv. Act, 1881, s. 44 (where that act applies), would also, it is conceived, remain in force after apportionment (whether by severance of the land or of the rent-charge itself). An action also lies against the terre-tenant for recovery of a rent-charge (*Thomas* v. *Sylvester*, L. R. 8 Q. B. 368 ; *Swift* v. *Kelly*, 24 L. R. Ir. 107 ; *Re Blackburn, &c., Society*, 42 Ch. D. 343), or an apportioned part thereof, whether, as it seems, it be legal or equitable (*Booth* v. *Smith*, 14 Q. B. D. 318, see pp. 320, 321).

or enjoymt or rect of the rents & profits of the same land & bldgs, or any pt thof.

[And 2ndly, 3rdly, & 4thly, *similar covts with B. in respt of the lands descd in the second, third, & fourth schdles.*]

And [5thly] that he, the sd A., his hrs, exs, & ads will at all times keep the sd B., his hrs & assns, & his or their tenants, of the respive lands & bldgs descd in the sd respive schdles hto, indemnified agst all losses, costs, damages, & expses wch he or they shl or may incur by reason of any distress or entry being levied or made in or upon the sd lands & bldgs, or any pt thof, or any other pcdg being had or taken to enforce or compel the paymt of the sd rent-chge of £50, or any pt thof, contrary to the covts hinbfe contd, or any of them. In wits, &c. Indemnity of property in each schedule against part of rent apportioned on the rest of the property.

Schdles.

XXI.

FAMILY AGREEMENT *to give effect to* Intended Will *not* Executed.

This indre (*a*), made, &c., betn A., 1. B., 2. C., 3. D. & E., his wife, 4. Whas X., late of, &c., died on the —— day of Recitals.

(*a*) The agreement should be under seal to avoid any question as to there being a sufficient consideration to support it (as to family arrangements see 2 White & T., Lead. Cas. Eq., notes to *Stapilton* v. *Stapilton*, 920; Dav. Prec., Vol. III., pt. 1, 278, note). If there is real estate, and the case is not within the Married Women's Property Act, 1882 (which it probably would be as to the testator's own property, but possibly not as to the settled property), the deed must be acknowledged by E.; see *Nicholl* v. *Jones*, 3 Eq. 696. As to formalities.

Reference may here be made to the authorities deciding that an agreement between two persons having expectations from a third, to divide equally whatever property may come to either of them from him, whether under his will, or intestacy, or by gift *inter vivos* is valid: *Beckley* v. *Newland*, 2 P. Wms. 182; *Wethered* v. *Wethered*, 2 Sim. 183; *Harwood* v. *Tooke*, *Ib.* 192. Agreements as to expectancies.

Death of intestate. Family. —— intestate, leavg the sd A., B., C., & E., his four chn & only next of kin him survivg: And whas the sd A. is the eldest son & heir-at-law of the sd X: And whas shortly

Intended will. before his dece, the sd X. gave instrons to his solors for the preparon of his last will, & the same was drafted but never

Agreement. signed by the said X: And whas the draft will marked Z., this day signed by all the pties hto, is admitted by them & each of them to contain the intd testy disposons of the sd X., & all the sd pties are desirous, notwg the intestacy of the sd X., to deal with & dispose of all his real & psonal este, & also the trust este comprd in a settlemt dated, &c., wch by the sd will the sd X. intd to appt under a power contd in such settlemt, & wch in default of such apptmt wd have devolved on the sd pties hto or some of them, under the trusts of the sd settlemt, in the same mner as the same resply wd have been dealt with & disposed of under the sd draft marked Z. if the same had

Witnesseth. been a completed doct: NOW THIS INDRE WITNETH that in conson of the premes & by way of family arrangemt, & in order to avoid questions & disputes as to the division of the real & psonal este of the sd X., & of the

Agreement. trust este under the sd settlemt, it is hby agrd & decld, & the sd pties hto hby mutually covt as follows:—

Division of property. 1. All the real & psonal ppty of the sd X., includg the ppty over wch he had under the sd settlemt a power of apptmt, shl be disposed of, divided, & dealt with in accordce with the terms of the sd doct marked Z., & signed by the sd pties hto as afsd.

Execution of deeds. 2. All & every of the sd pties hto, & their respive hrs, exs, ads, & assns, shl exte all such deeds & docts, & do all such acts as may be necy or be deemed expedient to give complete effect to this agrmt, & the costs of the preparon & exon of such docts (inclusive of this agrmt) shl be deemed expses attendg the exon of the trusts & disposons decld & contd in the sd doct marked Z.

No proceedings to be taken by any party 3. None of the sd pties, or his or her hrs, exs, ads, or assns, shl as next of kin or heir-at-law, or heir accdg to the custom of any manor of the sd X., or as claimg under the

trusts contd in the sd settlement in default of any exercise of the power of apptmt afsd, or in any other character bring any action or take any pcdgs agst any other pty hto, his or her hrs, exs, ads, or assns, in reference to any pt of the sd real or psonal ppty of the sd X., or the trust este under the sd settlemt, but this shl not prejudice the rt of any pty to enforce pformce of this agrmt, or of any of the terms hrof. claiming under intestacy.

4. The sd A. shl be allowed to obtain witht opposon lres of admon to the psonal este & effects of the sd X., but such este & effects shl be administered & dealt with accdg to the terms of this agrmt. In wits, &c. Administration to be obtained

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XXII.

AGREEMENT *between a* Firm *of* Traders *and their* Workpeople, *granting to the latter a* Share *in the* Net Profits *of the* Firm.

Parties, A., B., & C., carrying on business as ——, at ——, under the style or firm of —— (hinafter called the firm) of the one pt, & the sevl psons named in the schdle hto, being clerks, servants, & workmen of the firm of the other pt: Whas the firm have employed, or agrd to employ, the sevl psons named in the sd schdle at the salaries or wages written opposite to their respive names in the same schdle [in the wages book of the firm]: And whas the firm are desirous to give to the sd psons, in addon to their sd salaries or wages, & by way of further remuneron durg the current yr, such sums of moy as hinafter mentd, upon the terms that the sd psons resply shd on their pt enter into such agrmt as is hinafter expd: NOW IT IS HBY AGRD as follows:— Parties. Recital of engagement. That workmen are to share in net profits.

1. The firm will, at the annl stock-takg of the sd business in the month of ——, in the yr ——, apportion to each pson named in the sd schdle a sum of moy, wch shl bear the same proportion to one-tenth pt of the net profits of the sd busi- A proportionate share of net profits to be apportioned to each workman.

ness durg the precedg yr as the salary or wages pd to such pson durg the same yr shl bear to the total amt of salaries & wages pd by the firm durg the same yr.

According to the certificate of the cashier.

2. The firm shl, with all convenient speed after the amt of the sd net profits has been ascertained, cause to be prepared a certfe, showg the sum apportioned to each such pson as afsd, & shl cause the same to be signed by the cashier for the time being of the firm, or such other pson as the firm may appt for the ppose, & the sd certfe shl be absolutely bindg & conclusive as to the amt payable under these psnts to each such pson as afsd. The firm will pay to each such pson as afsd the sum appearg by the sd certfe to be apportioned to him immedly after the signature thof by the sd cashier, or such other pson as afsd.

Firm to have exclusive right of determining what are profits.

3. The firm shl have the sole & exclusive right of ascertaing & determing the amt of the sd net profits, & shl be entled to make allowces & dedons for intt on capital, rent, deprecion in the value of stock & plant, & bad & doubtful debts, & any other allowces & dedons wch the firm may consider pper, & none of the psons named in the sd schdle shl have any rt to examine or inspect the books or accts of the firm, or to make any inquiry or investigon whatsr as to the amt of the sd net profits, or the sum apportioned to any of the sd psons, or how the same resply are made out, nor shl any of the sd psons be entled to or in any way assume or claim any of the rts or powers of a ptner in the firm (*a*).

Proviso as to workmen leaving service of firm.

4. Any pson named in the sd schdle who shl leave or be dischged from the service of the firm or shl die bfe the sd stock-takg, shl not be entled to have any such sum as afsd apportioned or pd to him or his repves.

Firm may discharge workmen.

5. The sevl psons named in the sd schdle shl well & faithfully serve the firm in their respive situons, & at their respive salaries & wages as afsd, until the —— day of ——, 18——, but the firm shl have full power to dischge all or any of the sd psons at any time or times, notwg this agrmt.

(*a*) It appears proper, in this case, expressly to declare that no employé shall be a partner. But see note to Precedent V., *supra*, p. 21.

6. If any dispute shl at any time arise betn the firm & any one or more of the sd psons named in the sd schdle as to the pper meang or constron of this agrmt, or anything done or to be done in psuance hrof, or in anywise relatg hto, the mre in dispute shl be referred to the solor or solors for the time being of the firm, whose decision shl be final & conclusive, & absolutely bindg on all pties: Provd always that this clause shl not be deemed to limit or affect the rts reserved to the firm, or to extend the rts conferred on the psons named in the sd schdle by the precedg clauses hrof. *Agrmt not to be affected by change in firm, ante, Precedent XI., Clause* 17: In wits whof the sevl pties have hrunto set their respive hands, the sd A., B., & C., & such of the psons named in the sd schdle as are now in the service of the firm on the —— day of ——, & such of the psons named in the sd schdle as are not now in the service of the firm on the sevl days written opposite their respive names in the sd schdle. Special arbitration clause.

[*Schdle.*]

XXIII.

AGREEMENT *between a* Railway Company *and a* Landowner *for withdrawal of the* Opposition *of the latter to a* Bill *for the* Extension *of the* Railway *through his settled estates* (*a*).

Parties, [A. as agent for & on behalf of] the —— rly Co (hinafter called the Co), 1. B., *landowner*, 2. C. & D.,

(*a*) See also the next precedent and the form of agreement in 2 Dav. Prec., pt. 1, p. 44. Many examples of clauses required for agreements of this kind will be found in some of the important Railway and Canal, &c. Acts, such as the Manchester Ship Canal Act, 1885, 48 & 49 Vict. c. clxxxviii., and the Manchester Corporation Water Act, 1879, 42 & 43 Vict. c. xxxvi. Any moneys received by a tenant for life for withdrawal of his opposition are within s. 73 of the Lands Clauses Consolidation Act, Powers of tenant for life as to opposing bills.

trees of the settled estes of the sd B. in the coy of —— (hinafter called the trees), 3.

Recital as to pending bill for extension of railway,

Whas a bill is now pendg in parliamt by wch it is proposed to empower the Co to make addonal rlys includg a rly in the coy of —— to be called the —— rly, wch will pass through a portion of the sd settled estes of the sd B. situate in the parishes of, &c., in the same coy, & it will be necy that such rly shd pass through a portion of such lands situate in the parish of ——, ptly by means of a deep cuttg, & ptly by a tunnel: And whas the sd B. has presented a peton to the House of Commons praying to be heard agst the sd bill as far as the same affects his ppty & intts: And whas in order to obviate all opposon by the sd B. & his trees to such pendg bill, & for the other ppses hrin appearg, the sd pties hto have agrd to enter into the agrmts hinafter contd: NOW THESE PSNTS WITS, that for the consons hrin appearg the Co do hby agree with the sd B. & also septely with the trees, so far as regards the agrmts & provons hinafter contd wch are or ought to be pformed or observed by the Co; And the sd B. & his trees do hby agree with the Co, so far as regards the agrmts & stipulons hinafter contd wch are or ought to be pformed or observed by the sd B. or his trees, as follows:—

and opposition by B.

Agreement.

Price to be paid for lands taken and for right to make tunnel (*b*).

1. The Co shl pay to the sd B. or his trees for the pchase of all lands formg pt of the estes of the sd B. situate in the parishes of, &c., wch shl be taken by them for the ppose of the sd rly & works, at the rate of £—— per acre, & so in proportion for any less quantity than an acre, exclusive of timber trees & underwood; And shall pay to him or them for the rt or easemt of makg, using & maintaing the tunnel

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1845: *Pole* v. *Pole*, 2 Dr. & Sm. 420; but this enactment does not interfere with the power of the tenant for life to contract with the company: *Taylor* v. *Chichester, &c., Railway Co.*, L. R. 4 H. L. 628. The tenant for life must pay the costs of his opposition above those for which the Company are liable (*Re Earl of Berkeley's Will*, 10 Ch. 56), unless the opposition is sanctioned by the Court under the Settled Land Act, 1882, s. 36.

(*b*) As to clauses 1 and 2, see *Taylor* v. *Chichester, &c., Railway Co.*, L. R. 4 H. L. 628.

wch will be necy under a portion of the sd estes in the parish of —— as afsd, the sum of £——, such respive sums to be exclusive of compenson for severce & for any injury or inconvence to the lands adjoing the lands pchased, or to the lands over or adjoing the sd tunnel, or to the sd B. or his trees as owners of such lands arisg from the constron of the sd rly or the works of the Co, & exclusive also of the compenson payable to the lessees, tenants, or occupiers of the lands taken by the Co or the lands over or adjoing the sd tunnel for the pchase of their intts or orwise (*c*).

2. The Co shl take the whole of the pces of land nod. —— in the deposited plans & books of reference of the Co for the parish of —— afsd except such portion thof as may be required for the approach road hinafter mentd. The whole of certain pieces of land to be taken (*d*).

3. The Co shl pay to the sd B. or his trees for all timber,trees, & underwood on the lands taken by them, at a valuon to be made, in default of agrmt, by two valuers or an umpire in the usual way. Timber.

4. The Co shl not under the provons of the sd intd act witht the consent of the sd B. or his trees, take, use, occupy or enter upon any land or ppty of the sd B. or his trees, outside the limits of devion shown on the deposited plans except so far as may be necy for or in relon to the alteron, constron, or exon of any roads, bridges, drains, or other accommodon works in connon with the rly or the works hby provd to be done by the Co. Restriction on right of company to take lands outside limits of deviation (*e*).

(*c*) This assumes that the acquisition of an easement is authorised by the bill, as it is not by the L. C. C. Act, 1845 (*Pinchin* v. *London & Blackwall Ry. Co.*, 5 D. M. & G. 851). If the land owner is unable to contract except under the provisions of that Act (which however would not now usually be the case having regard to the powers of the Settled Land Act, 1882), add this clause :— Provision as to limited owners

"The Co shl pay the full amt of compenson for each of the pposes afsd, determined by a valuon psuant to the Lands Clauses Consolidon Act, 1845, if such amt shl exceed the respive amts hby agrd to be pd."

(*d*) See note (*b*), last page.

(*e*) See *Doe* d. *Armitstead* v. *North Staffordshire Railway Co.*, 16 Q. B. 526 ; *May* v. *Great Western Railway Co.*, L. R. 7 Q. B. 364.

Reservation to vendor of right of pre-emption (*f*).

5. As to any lands of the sd B. or his trees wch may be taken by the Co under the provons of the sd intd Act, but wch shl not be required for the pposes throf, the sd B. or his trees shl have the like rt of pre-emption as he or they wd have been entled to under the Lands Clauses Consolidon Act, 1845, if such lands had not been built upon or used for bldg pposes, & no pt of such superfluous lands shl, in the meantime, be let by the Co on lease or from yr to yr or orwise to any pson other than the sd B. or his trees, except only to servants of the Co from yr to yr to be used as garden ground, & for no other ppose.

Liberty to make tunnel.

6. The Co, upon makg such paymt for the same as afsd, shl have & be entled to the rt, easemt, or liberty of makg, usg, & maintaing such tunnel as they may deem necy for carryg their proposed new line through a portion of the sd estes situate in the parish of —— afsd, & also of erectg & maintaing telegraph posts & wires over the surface of the sd lands above the tunnel in the line of such rly, the Co payg from time to time to the sd B. or his trees, or his or their tenants, compenson for any damage or injury occasioned by the exercise or user of such respive rts, easemts or liberties.

Occupation rent for lands temporarily taken.

7. The Co shl pay to the sd B. or his trees, in respt of all land formg pt of the sd estes wch shl be taken or occupied by the Co for the deposit of earth or spoil durg the constron of the sd rly or the exon of the works, or for other temporary pposes, a rent of £—— per acre p.a., & so in proportion for any less quantity than an acre or any less time than a yr, durg their occupon or user of the same (such rent to be exclusive of any compenson payable to the tenants or occupiers of such lands), and shl pperly fence the land so taken: And in case the Co shl take any lands of the sd B. for the deposit of earth or spoil, they shl remove & store the surface soil to a depth of not less than —— inches,

Surface to be restored.

(*f*) See the Act, s. 128; and as to lands taken by agreement, see *City of Glasgow, &c., Co.* v. *Caledonian Railway Co.*, L. R. 2 H. L. Sc. 160.

& shl on complon of the works, or sooner in case such respive lands shl no longer be required by the Co for the ppose of the works, restore & deliver up such spoil banks & other lands taken for temporary pposes, & replace the surface soil & leave the spoil banks in uniform heaps pperly trimmed to slopes of not less than four to one, & covered with soil & fit for cultivon, & sown with seeds or planted, as the sd B. or his trees, or their agent, shl direct; And the Co shl also upon givg up the occupon thof pay a sum of £—— per acre, & a proportionate amt for any less quantity than an acre, for all land left covered with spoil, & shl also upon givg up the occupon of the land belongg to the sd B. or his trees, wch may have been taken by the Co for temporary pposes, pperly level such land, & remove, or at the option of the sd B. or his trees leave, the fences thto, & pay to him or them compenson for any injury done by the works of the Co to such land, the amt of such compenson, unless settled by agrmt, to be ascertained by the valuon or determinon of two referees or an umpire in the usual way.

Accommodation works.

8. The Co shl exte & provide the accommodon & other works specified in the first schdle hto for the proton & benefit of the sd B. & his trees, & his & their tenants, in addon to any other works wch the Co may be or become liable to exte under the genl Acts relatg to rlys for the proton, accommodon, or benefit of the sd B. & his trees, or his or their tenants.

Drainage.

9. The Co shl not in any respt damage or obstruct the existg drainage of the lands of the sd B., but shl construct pper drains, culverts, & other works for the efficient drainage of the sd lands (so far as the drainage may be affected by the Co's works), at such depths & in such mner as the agent for the time being of the sd B. or his trees shl direct, & also all such works as may be required for maintaing & makg perfect any under drainage wch may be intersected or orwise interfered with by the Co's works.

Execution and maintenance of

10. All accommodon & other works hinbfe agrd to be done by the Co within the boundary of the lands pchased

accommodation works. by them shl at all times hrafter be maintained by the Co at their own expse in all respts, & to the reasble satisfon of the sd B. or his trees.

Compensation to tenants. 11. The Co shl pay all compenson pperly payable to the lessees, tenants, or occupiers of the lands formg pt of the estes of the sd B. taken by the Co whether permanently or for temporary pposes, or over or adjoing the sd tunnel, a pper apportionmt or abatemt, to be fixed by the agent for the time being of the sd B. or his trees, being made in respt of the rent payable by the tenant of lands of wch a pt only is taken by the Co.

Costs. 12. The Co shl pay to the sd B. & his trees all costs, chges, & expses incurred or to be incurred by him or them in respt of the sd applicon to parliamt & his opposon to & peton agst the sd bill, or in respt of this agrmt, & any deeds, instrumts, or acts wch may be necy or pper for carryg out the same, or in respt of the works & mres hinbfe agrd to be exted & pformed by the Co, in addon to all other costs, chges, & expses wch may be payable by the Co under the Lands Clauses Consolidon Act, 1845, or any other Act affectg the Co.

Clauses to be inserted in Bill giving effect to agreement (*f*). 13. The Co shl use their best endeavours to procure the insertion & enactmt in the pendg bill of any clauses or alterons wch the sd B. or his trees may reasbly require for the ppose of givg effect to this agrmt [*or*, the clauses contd in the schdle hto eir witht alteron or with such alterons only as shl be assented to by the sd B. or his trees].

Agreement 14. Except the two last precedg clauses, the agrmts on

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Standing orders as to bill confirming agreement. (*f*) Where the bill refers to and seeks to confirm the agreement, it must be scheduled to and printed with the bill (Commons S. O., session 1893), and must contain a clause declaring it to be subject to such alterations as Parliament may think fit to make in it (Lords S. O., session 1893). If the clauses to be inserted in the bill require a reference to a plan, the plan should be referred to as, "signed by —— the chairman of the Committee of the House of Commons to whom the bill for this Act was refd, & deposited in the private bill office of that House."

the pt of the Co hinbfe contd are contingent on the sd pendg bill being passed into a law in its psnt or some modified form in the psnt session of parliamt, so far as regards the clauses authorisg the formon of the sd rly through the estes of the sd B. conditional on Bill being passed.

15. On the faith of this agrmt being in all respts specifically pformed & observed on the pt of the Co, the peton of the sd B. agst the sd bill shl be withdrawn, & the sd B. & his trees shl not, directly or indirectly, offer or sanction any opposon to the sd bill. Opposition to be withdrawn.

16. The expression "the trees," as hinbfe used, shl include the hrs & assns of the sd trees. In wits, &c. Interpretation.

[*Schdles.*]

XXIV.

AGREEMENT *between the* Promoters *of a* Railway Company *and a* Landowner *for withdrawing* Opposition *to the* Company's Bill.

Parties, A. & B., some of the provonal committee (*a*) of the intd Rly Co hinafter mentd (who are hinafter called the Promoters), 1. The Co hinafter mentd as intd to be incorpd under the name of the —— Rly Co (hinafter called the Co) 2. C., *landowner*, 3.

Whas the promoters & others are promotg a bill now pendg in parliamt, intituled, &c., whby it is proposed to incorporate the Co, & to authorise them to make & maintain a rly from —— to ——, the line of wch rly wd pass for a considerable distce through a farm & lands situate, &c., of wch the sd C. is tenant for life: And whas the sd C has Recital as to pending Bill for incorporation of Company, and opposition by C.

Introductory recital.

(*a*) As the provisional committee cannot bind the company when incorporated (Hodges on Railways, pp. 142, 143; Browne & Theobald on Railways, p. 536), it is important to have the personal guarantee of some responsible person.

lodged in the House of Commons a peton agst the sd bill: Introductory recital. And whas, in order to the obviatg of all opposon by the sd C. to the sd bill & for the other pposes hrin appearg, the pties hto of the first & third pts have entd into the agrmts hinafter contd, with the intention that the Co shl become pty Agreement. to & exte these psnts forthwith after their incorporon: NOW THEREFORE THESE PSNTS WITS that for the consons hrin appearg it is hby mutually agrd by & betn the promoters, on behalf of themselves & all other the promoters of the pendg bill, & with the intent to bind the Co, on the one hand, & the sd C. for himself & his assns, & also for the trees & beneficial owners from time to time of the farm & lands afsd (& who is & are comprd in the expression "the sd C." as hinafter employed), on the other hand, & also by way of septe agrmt betn the Co on the one hand, & the sd C. on the other hand, as follows:—

1. [*Special agrmts, see last Precedent.*]

Certain clauses to be inserted in the Bill. 2. The promoters will use their utmost reasble endeavours to procure the insertion & enactmt in the pendg bill of the clauses wch are set forth in the schdle hto.

3. [*Provon as to costs to be pd by Co or promoters, see last Precedent.*]

Agreement to be executed by Company when incorporated (*b*). 4. If the pendg bill be passed into law in the psnt session, the promoters will within —— days thrafter procure the Co to exte, under their common seal, eir these psnts & the duplicate thof, as the pty thto of the second pt, or some other deed or instrumt to be prepared by the Co adoptg this agreemt, & on the same being so exted by the Co, all the future liability of the promoters under this agrmt shl cease: [And in case the Co shl refuse or neglect to exte this agrmt or such other deed or instrumt as afsd within the time hinbfe limd, & in this respt time shl be of the essce of the contract, the sd A. & B. & their respive hrs, exs & ads, shl

(*b*) It would of course be better to get a clause inserted in the bill making the agreement binding on the Company; see as to this above, p. 70, note (*f*).

be jtly & sevlly liable to pay on demand the sum of £—— to the sd C., his exs or ads, as liquidated damages.]

5. On the faith of this agrmt being on the pt of the promoters & the Co resply in all respts specifically pformed & observed, the sd C. will not in any mner, eir by himself or his agents, further oppose or orwise impede the passage of the sd bill through parliamt. In wits, &c. Opposition to be withdrawn.

[*Schdle.*]

XXV.

AGREEMENT *for* Working *a* Quarry. *A Short Form* (*a*).

Agrmt, &c., betn A., hinafter called the owner, 1; B., hinafter called the contractor, 2. IT IS HBY MUTUALLY AGRD that the contractor shl get stone from the quarry, lately opened on —— farm by the owner upon the terms follg:—

The contractor shl at his own expse—

1. Get and cord bldg & rough blue stone from the sd quarry for the use of the owner.

2. Remove the whole of the stone from any pit bfe openg anor.

3. Fill in every pit as soon as it is exhausted, or sooner if required, & replace the top mould so as to render it as fit as circes will admit for agricultural operons.

The owner shl—

4. Pay to the contractor the sum of —— shillings per cubic yard for gettg & cordg bldg stone, & the sum of —— shillings per cubic yard for gettg & cordg rough blue stone.

And it is hby agrd as follows—

(*a*) It will be seen that this is merely a working agreement, not operating as a demise. For forms operating as demises of quarries, &c., see Leases, Mining.

5. The contractor shl cord the stone at the option of the owner at the mouth of the quarry or by the side of the turnpike road, but in the latter case the owner shl cart the stone from the quarry to the side of the turnpike road at his own expse.

6. The contractor shl rece a weekly paymt on acct in proportion to the work actually done, but not to exceed £—— a week for each man actually employed. Such paymt is to be brought into acct when the corded stone is measured, & the balce, if any, pd to the contractor. If the balce shd be agst him, he shl forthwith repay the same to the owner.

7. Eir pty may determine this contract on givg one week's written notice, & thrupon the contractor shl, if required by the owner, fill in every open pit & replace the top mould so as to render it as fit as circes will admit for agricultural pposes. But if the owner shl determine the contract, the contractor shl be at liberty prior to fillg in any pit to get & cord the stone from the same, he workg with all pper despatch & being pd for the stone after the rate afsd. In wits, &c.

APPOINTMENTS.

Preliminary Note.

See Elph. Introd. Conv. 86, 308. For conveyances by way of appointment, see Conveyances; for testamentary appointments, see Wills; and see also Settlements; and for appointments of new trustees, see that heading.

Law as to appointments under special powers.

The law as to appointments is chiefly important in connection with appointments under special powers, *i.e.*, powers exercisable in favour of a limited class of objects, as to which the following points principally require notice.

Exclusive appointments.

By the Act 37 & 38 Vict. c. 37 (which, though it does not expressly so declare, is considered, and has, it is believed, been treated, as undoubtedly applying to powers previously as well as subsequently created), the Illusory Appointments Act, 1 Wm. 4, c. 46, was extended so as to enable an exclusive appointment to be made, although not expressly authorised by the power, without leaving a nominal sum for the excluded objects.

Objects of power.

Care must of course be taken to keep within the power as to the objects in whose favour an appointment may be made, bearing in mind that under a power to appoint to children an appointment cannot be made to the issue of a child (*Brudenell* v. *Elwes*, 1 East, 442, 7 Ves. 382; though a power to appoint to "issue" *primâ facie* includes all descendants; *Leigh* v. *Norbury*, 13 Ves. 344, *Marshall* v. *Baker*, 31 Beav. 608, *Re Warren*, 26 Ch. D. 208); nor to the representatives of a deceased child (*Maddison* v. *Andrew*, 1 Ves. Sen. 58), for whom provision can only be made by leaving a share unappointed to devolve on them under the trust in default of appointment (with the aid of the hotchpot clause, if any), assuming that the deceased child had attained a vested interest.

Perpetuities.

Special care must also be taken in exercising such a power to keep within the limits of the rule against perpetuities, both as regards the objects of the appointment and the time at which their interests are to vest, the criterion being whether the interests created by the appointment would have been valid if inserted in the instrument creating the power: see 3 Dav. Prec. 154; Tudor's L. C., Conv. 484 *et seq.*, notes to *Cadell* v. *Palmer*. Thus, under a power in an antenuptial settlement to appoint to issue generally, an appointment to a son for life with

remainder to such of the son's children as attain 21, is of course too remote (*Re Warren, ubi sup.*); so under a similar power the vesting of the shares of the children of the marriage cannot be postponed to a later age than 21, except as to those who attain the specified age within 21 years from the death of the surviving parent; and where the appointee was unborn at the time of the creation of the power, although a life interest can be validly given to him, with remainder over to an object of the power, a restraint on anticipation cannot be annexed to the life interest in the case of a female, so as to restrict the power of disposition beyond the legal limit (*Fry* v. *Capper*, Kay, 163, and later cases referred to in Vaizey on Settlements, p. 836, note (*l*)); and the life interest cannot be made forfeitable on bankruptcy or alienation, or any other event, so as to create such a restriction (*Hodgson* v. *Halford*, 11 Ch. D. 959, where the clause of forfeiture was on a change of religion; and see 1 Jarm. Wills, p. 828). The rule against perpetuities has not superseded, but exists independently of, the old rule against "a possibility on a possibility;" which latter rule does not apply to personalty, but only to legal limitations of real estate; see the discussion in *Re Frost*, 43 Ch. D. 246; *Whitby* v. *Mitchell*, 42 Ch. D. 494, 44 Ch. D. 85.

Delegation of power.

It should also be remembered that a special power being fiduciary cannot be delegated (Sug. Pow. 179), so that if an appointment is made under the usual power to a child for life with remainder to its issue, a power of appointment among the issue cannot be given to the child (*Ingram* v. *Ingram*, 2 Atk. 88; *Williamson* v. *Farwell*, 35 Ch. D. 128); and for the same reason, although the life interest of the child can be validly made determinable on bankruptcy, &c., if the child was born before the creation of the power, the usual trust (creating a protected life interest) for the application of the income after forfeiture at the discretion of the trustees for the benefit of the child and other objects, even though the latter are within the power, would be bad.

Other points.

The equitable doctrine as to frauds on powers must also be carefully borne in mind; see as to this the notes to *Aleyn* v. *Belchier*, 1 White & T. L. C., Eq. 437. As to what conditions may lawfully be annexed to an appointment, see remarks of Hall, V.-C., in *Hodgson* v. *Halford*, 11 Ch. D. 966. Where an appointment is made under a settlement, containing a power to the husband or wife to withdraw part of the funds from settlement on a second marriage or otherwise, this power should be expressly reserved or negatived where it would clash with the appointment. As to the effect of the donee of a special power releasing or covenanting not to exercise it, or to exercise it in a particular manner, see *infra*, SETTLEMENTS.

See further as to appointments under special powers, 3 Dav. Prec. 144 *et seq.*; Tudor's L. C., Conv., notes to *Alexander* v. *Alexander*, p. 403 *et seq.*

Instances of miscarriage in the case of appointments under special powers owing to want of attention to one or other of the points above mentioned, are frequent.

As to the stamp duty on appointments, see the Stamp Act, 1891, 54 & 55 Vict. c. 39, sched. tit. APPOINTMENT, SETTLEMENT.

I.

APPOINTMENT *by* INDEPENDENT DEED-POLL (*a*) *by a* WIDOW *under a power in her Marriage* SETTLEMENT, *of a* SUM *of* STOCK (*b*), PART *of a larger* SUM, *subject to the* APPOINTOR'S *life* INTEREST, *to a* SON. PROVISO, *in case of a* CHANGE *of* INVESTMENT, *appointing the* EQUIVALENT *in* MONEY. VARIATIONS *where the* RESIDUE *of the funds are appointed* REVOCABLY *to* ALL *the children including the* SON, *with the object of* EXCLUDING *the* HOTCHPOT CLAUSE.

TO ALL TO WHOM THESE PSNTS SHL COME, A., of, &c., sends greetg: WHAS by an indre dated, &c., and expd to be made betn, &c. (being the settlemt exted previously to & in conson of the marre wch was shortly aftwds solemnised betn the sd A. & B.), certn shares or intts to wch the sd A. was then entled in reversion expectant on the dece of her father K. in the trust moys, stks, funds, or secs, subjt [or to become subjt] to the trusts of an indre dated, &c., and thrin refd to, & wch were by the sd now reciting

Recitals.

Marriage settlement of appointor.

(*a*) Appointments of the nature of that in the text are frequently made without recitals (see Prec. III.). It is sometimes convenient to endorse the appointment on the settlement creating the power, as in the next precedent; or it may be described as supplemental or as intended to be read as annexed to the settlement or will (without of course the necessity for any actual physical annexation); see the Conv. Act, 1881, s. 53, and above p. 3, note. In either case recitals of the original deed or will, and of any previous endorsed or annexed deeds or of matters therein recited, will be omitted, except so far as a reference to the contents of the previous instruments may be necessary to make the new deed intelligible. Probably the practice (a very convenient one) of engrossing deeds bookwise, will become general, so as to lead to the general adoption of the plan of "annexing" supplemental deeds, which can often be done where endorsement would be impracticable or inconvenient.

As to endorsing and annexing appointments.

(*b*) It is obviously better to appoint a sum of money, and not a specific sum of stock, having regard to the possibility of the investment being changed.

indre assnd to the sd P. & Q., three sevl sums of £—— Consold. 3 p.c. annies, £—— Reduced 3 p.c. annies & £—— New 3 p.c. annies (*c*) wch were thrin recited to have been transferred into the names of the sd P. & Q., were settled upon certn trusts after the solemnizon of the sd then intd marre for the investmt & varyg the investmt thof, & for paymt of the income to the sd A. & B., & the survor of them, durg their, his, or her lives or life, in mner thrin mentd, & after the death of such survor in trust, &c., *for chn or remoter issue of marre as A. & B. or the survor shd appt, set out fully as far as material,* [with a trust in default of apptmt for such chn of the sd marre as shd attain the age of 21 yrs, or in the case of daurs marry, subjt to the usual provon for bringing apptd shares into hotchpot]: AND WHAS the sd K. died on the —— day of ——: AND WHAS shortly after the death of the sd K. the sum of £—— was pd to the trees of the sd indre of settlemt in satisfon of the sd shares or intts thby settled: AND WHAS the sd B. died on the —— day of ——, witht havg concurred with the sd A. in makg any apptmt of any pt of the sd trust premes under the jt power in that behalf given to them by the sd indre of settlemt: AND WHAS the sd respive sums of £—— Consold. Reduced and New 3 p.c. annies & the sd sum of £—— are now represented by the sums of stk & secs the parlars whof are specified in the schdle hto, all of wch are now standg in the names of S. & T., the psnt trees of the sd settlemt: AND WHAS there have been — chn of the marre of the sd A. & B., of whom C. of, &c. is one: AND WHAS the

Death of father of appointor.

Payment of settled share to trustees.

Death of appointor's husband.

Present state of the trust funds.

That appointee is one of the

Designation of public funds.

(*c*) Since the National Debt Act, 1870, the old 3 per cents. have been described (as in that act) as above. The proper designation of the stock created under the National Debt Conversion Act, 1888, s. 2 (4) (popularly known as Goschens) is "$2\frac{3}{4}$ per cent. Consold. stk" until the 5th of April, 1903, after which date it will be "$2\frac{1}{2}$ per cent. Consold. stk." The small amount of $2\frac{3}{4}$ per cent. stock previously in existence (known as Childers), differs as not being reducible to $2\frac{1}{2}$ per cent. As to the effect of the Act of 1888, and as to previous legislation with regard to the National Debt, see Burdett's "Official Intelligence."

sd A. is desirous of makg such appmt of pt of the sd trust funds in favour of the sd C. [& also such revocable apptmt of the residue thof] as is hinafter contd: NOW THESE PSNTS WITS that in exercise of the power for this ppose given to her by the sd indre of settlemt, & of every or any other power enablg her in this behalf (*d*), the sd A. doth hby irrevocably appt that the sum of £—— £2 15*s*. p.c. stk, pt of the sum of £—— like stk specified in the sd schdle hto, shl subjt to the life intt thrin of the sd A. (*e*) under the sd settlemt & subjt to succession duty (*f*) belong to & be held in trust for the sd C., his exs, ads, & assns absolutely, but witht prejudice to the powers of varyg investmts contd in the sd recited indre: [PROVD ALWAYS, & the sd A. doth hby appt & direct, that if at the death of her, the sd A., the sd trust funds & ppty shl not comprise the sum of £—— £2 15*s*. p.c. stk, then such a sum of like stk, if any, as at the death of the sd A. shl be comprd in the sd trust funds & ppty, shl be considered as hby appted, & shl be appropriated as far as the same will extend, towards satisfon of the apptmt hinbfe contd, & the sd trust premes shl moreover be chged with the paymt to the sd C., his exs, ads, or assns, at the death of the sd A., of such a sum of moy as, with the value of the £2 15*s*. p. c. stk (if any) then comprd in the sd trust premes, shl at the price of the day make up the equivalent of the sd sum of £—— stk, with intt on such sum of moy to be computed from the death of the sd A. at the rate of £3 10*s*. p.c. p.a.;] [AND THESE PSNTS ALSO WITS that in further exercise, &c., the sd A. doth hby appt that all the residue whether in posson or reversion of

children of the marriage.

Desire to appoint.

Witness.

Appointment of sum of stock.

Appointment of equivalent in money in case of a change of investment.

Revocable appointment of residue of

(*d*) These general words referring to all powers should be inserted in appointments; but in a case in which the circumstances were special, in the absence of any recital showing what power was in fact intended to be exercised, they were held ineffectual; *Re Porter*, 45 Ch. D. 179.

General words in appointments.

(*e*) If the life interest of the appointor is reducible on a second marriage, say, "subjt to the este & intt of the sd A. durg her widowhood, & in the event of her marryg again."

(*f*) As to succession duty, see *infra*, p. 82, note.

trust funds to other children equally.

the trust funds comprd in or subjt to the trusts of the sd settlemt wch shl remain after satisfying the appmt in favour of the sd C. hinbfe contd shl subjt to the life intt thrin of the sd A. be held in trust for all the chn of the sd marre of the sd A. & B. (includg the sd C.) & their respve exs, ads, & assns, in eql shares absolutely (*g*) *Power of revocon as to,* "the apptmt lastly hinbfe contd of the residue of the sd trust funds and premes," *infra*, p. 91, *mutatis mutandis*.] In Wrts whof the sd A. has hrunto set her hand & seal this —— day of ——.

The Schdle above refd to.

[*Schdle of Investmts.*]

Signed, sealed, and delivered by the above-named A. in the presce of (*h*).

As to appointment of residue to other children.

(*g*) A mere declaration excluding hotchpot would suffice (*Wellesley* v. *Mornington*, 1 Jur. N. S. 1202), but it seems better to do it by a revocable appointment. It is assumed in this case that all the children are of age; otherwise the appointment of the residue would of course be to such of them as attain 21, &c., with the addition if need be of advancement and maintenance, &c. clauses, see *infra*, p. 91. Even in the case of an appointment to adults, if the tenant for life is restrained from alienation either by a clause of forfeiture in that event, or the usual restraint in the case of a married woman, so that the life interest could not be released, provision should be made if need be, and if authorised by the power, to enable the fund or part of it to be advanced to the appointee in the lifetime of the tenant or tenants for life, as the power of advancement usually applies only to shares taken in default of appointment; see *infra*, p. 91, note (*b*).

Formalities as to execution.

(*h*) Where special formalities as to the mode of execution are prescribed by the power, the appointment may either be executed as so prescribed or attested by two witnesses in the ordinary mode; see 22 & 23 Vict. c. 35, s. 12. Notice of the appointment should be given to the trustees of the settlement.

II.

APPOINTMENT *by* DEED-POLL *endorsed on the* SETTLEMENT *creating the power by a* WIDOW *of* PART *of a* SUM *of* STOCK *to a* SON *on his* MARRIAGE, *in* ADDITION *to a* SUM *previously advanced to him, and* RELEASE *by the* APPOINTOR *of her* LIFE INTEREST (*a*), *there having been a previous endorsed* APPOINTMENT *of new* TRUSTEES. HOTCHPOT CLAUSE (*b*). VARIATIONS *where this and the prior appointment are made* SUPPLEMENTAL *to the* SETTLEMENT *instead of being* ENDORSED.

TO ALL, &c., the above-named (*c*) A., formerly the wife & now the widow of the within-named B., sends greetg.

(*a*) Where it is desired to make an immediate advance to a child by way of portion on marriage or otherwise, this may be done under the power of advancement, if it is within the power (see a form of consent by a tenant for life for this purpose, *infra*, DIRECTION AND CONSENT), or by appointment and release of the life interest of the parent or parents (if the case so admits), as in this Precedent. The latter course is often adopted to relieve the trustees from responsibility. The liability of the fund advanced to succession duty (in case of a settlement coming under the Succession Duty Act) would be the same in either case: *Exp. Sitwell*, 21 Q. B. D. 466. The release of the life interest would seem to be a voluntary settlement or transfer of property liable to be avoided under s. 47 of the Bankruptcy Act, 1883 (see *Re Player*, 15 Q. B. D. 682); but though the beneficiaries might be accountable, the trustees could hardly be so. As to the advancement clause.

(*b*) This clause having been omitted from the settlement.

(*c*) The words "above-named" have reference to the prior endorsed deed, which is supposed to contain a recital of the marriage. Otherwise that recital should be inserted; see Precedent IV.

If the appointment is made supplemental to the settlement (see above, p. 77, note), the deed may commence: Variation where deed is supplemental.

"TO ALL, &c., A., of, &c., widow, sends greetg. WHAS these psnts are intd to be read as supplemental or annexed to an indre of settlemt dated, &c., & made betn, *pties*, (hinafter called the settlemt) & to an indre dated, &c., & made betn, &c., being an appointmt of new trees of the settlemt: AND WHAS, &c."

The settlement and the matters contained in it will of course in that

Recitals. Death of husband. No previous appointment. Advancement to a child.

WHAS the sd B., the late husbd of the sd A., died on the —— day of —— : AND WHAS no apptmt was ever made by the sd A. & B. under the jt power of apptmt vested in them by the within written indre of settlemt: AND WHAS, on the —— day of ——, the sum of £—— New £3 p.c. annies, pt of the trust funds then subjt to the trusts of the sd indre of settlemt, was sold out by the trees thof, & the proceeds thof were applied for the advancemt in the world of C., one of the chn of the sd A. & B., with the consent of the sd A., psuant to the power in that behalf in the same indre contd :

State of funds.

AND WHAS the trust funds now remaing subjt to the trusts of the sd indre of settlemt consist of the sum of £—— deb stk of the —— Rly Co, & £—— Stk of the Bank of England, standg in the names of the above-named L. & M. the psnt trees thof:

Intended marriage, &c.

AND WHAS a marre is intd shortly to be solemnized betn the sd C. & D., of &c., & the sd A. is desirous of apptg to the sd C. the sum of £——, pt of the sd sum of £—— Bank Stk, in addon to the sum so advced for his benefit as afsd, & of surrenderg to him her life intt in the same in mner hinafter mentd:

Witness. Appointment to take effect on the intended marriage.

NOW THESE PSNTS WITS that, in exercise of the power in that behalf given to her by the within written indre of settlemt, & of every other power enablg her thrunto, the sd A. doth hby irrevocably appt that the sum of £——, pt of the sd sum of £—— Bank Stk, shl immedly after the solemnison of the sd intd marre vest in & be held in trust for the sd C. for his absolute benefit free from the succession duty wch will be payable in respt thof on the death of the sd A., wch shl be chgd upon & payable out of the residue of the trust funds

Release

comprd in the sd settlemt (*d*): AND THESE PSNTS

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case not be referred to as "within" written or mentd, &c., those expressions being only appropriate to endorsed deeds. See as to supplemental deeds the note *infra*, DEEDS.

As to succession duty.

(*d*) As to the succession duty, see 16 & 17 Vict. c. 51, s. 4, and 51 Vict. c. 8, ss. 21, 22. It is obviously more convenient to appoint the fund free of duty; otherwise it would have to be compounded for and paid in advance. If the power were created by will, legacy duty would be payable (see 36 Geo. III. c. 52, s. 12 *et seq.*), unless the testator died on or

FURTHER WITS that, in conson of the sd intd marre, the sd A. doth hby assn & surrender to the sd C., the life intt of her, the sd A. in the sd sum of £—— Bank Stk hinbfe expd to be hby apptd, to the intent that the sd C. may immedly upon the solemnison of the sd intd marre become absolutely entled in posson to the sd sum of £—— Bank Stk, & that the same may be immedly transferable by the trees or tree of the sd indre of settlemt to the sd C., his exs, ads, or assns (*e*): [PROVD. ALWAYS, & this apptmt is made subjt to the condon, that the sd C., his exs, ads, or assns, shl not, unless an express diron to the contrary shl be contd in any apptmt to be hrafter made by the sd A. under the afsd power, be entld to any share in the unappted pt of the trust funds or ppty subjt to the trusts of the sd settlemt witht bringing the share hby apptd to him as well as the sd sum so advced to him as afsd into hotchpot & acctg for the same accdly:] PROVD ALWAYS, & the sd A doth hby declare, that if the sd now intd marre shl not take place within six calr months from the date hrof, these psnts & everything hrin contd shl be void (*f*). IN WITS, &c.

of life interest to take effect on the marriage.

Hotchpot.

Appointment to be void if marriage does not take place.

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after the 1st July, 1888, in which case succession duty would be payable see 51 Vict. c. 8, s. 21 (2).

(*e*) A shorter form applicable to an appointment otherwise than on marriage would be to appoint "that the sum of £—— sterlg shl forthwith be raised by the trees of the sd settlemt clear of all dedons in respt of succession duty (wch shl be borne by & pd out of the residue of the trust funds comprd thrin) by sale of a sufft pt of the sum of £——, &c., formg pt of the sd trust funds, & shl be pd by them to the sd B.: AND in order to enable the sd sum of £—— to be forthwith raised & pd to him as afsd, the sd A. doth hby rele & surrender her life intt thrin to & in favour of the sd B. absolutely."

Shorter form of appointment otherwise than on marriage.

(*f*) This proviso is proper although the appointment is conditional on the marriage taking place: see *Page* v. *Horne*, 9 Beav. 570, 11 Beav. 227; *Mitford* v. *Reynolds*, 16 Sim. 130; or, if preferred, the form of appointment in Precedent IV. may be adopted. As the fund in this case is to be immediately transferred to the appointee, there is no need to give notice of the appointment to the trustees, especially if it is endorsed.

As to making appointment void if marriage does not take place.

III.

APPOINTMENT (*by Independent Deed without* RECITALS (*a*)) *by* HUSBAND *and* WIFE *to a* DAUGHTER, *on her* MARRIAGE (*b*), *of a certain* ALIQUOT SHARE *in the Trust Funds comprised in their Marriage* SETTLEMENT (*c*). VARIATIONS, *where a* SUM *of* MONEY *is appointed, and where a* FURTHER *Share is appointed by way of* ACCRUER *in the event of another* CHILD *dying under age, and where there has been a previous partial* APPOINTMENT *to another* CHILD, *and the whole of the remaining Trust Funds are appointed, subject to a limitation of the total amount. A short form.*

KNOW ALL MEN BY THESE PSNTS, that we, A., of, &c., *the husbd*, & B. his wife, in psuance of an agrmt entd into upon the treaty for a marre shortly to be solemnised betn our daur C., & D., of, &c., & in exercise of a power given to us by an indre of settlemt dated, &c., & expd to be made, &c., & of every or any other power in this behalf us enablg, do hby irrevocably appt that, subjt & witht prejudice to the trusts in the sd indre contd in relon to the income of the trust funds & ppty for the time being subjt to the trusts thof durg the lives of us, the sd A. & B.,

Appointment to daughter, subject to life interests,

(*a*) See p. 77, note (*a*).

As to appointments on a bargain.

(*b*) Such an appointment is usually made in contemplation of the appointed share being settled; the appointment may in that case be contained in the same deed as the settlement, but is usually separate; see SETTLEMENTS. As to the validity of appointments on a bargain for a settlement on marriage or otherwise, see 3 Dav. Prec., pt. 1, pp. 149, 150, note; *Re Turner*, 28 Ch. D. 205; *Re Crawshay*, 43 Ch. D. 615.

As to alternative form.

(*c*) This form, securing a fixed share to the child about to marry, is a common mode of appointment; but if some of the children are minors, or there is a possibility of more children being born, and the object is to secure to the child indefeasibly the share which he or she would have taken in default of appointment, neither less nor more, the next Precedent should be used.

& the life of the survor of us, one equal —— pt or share [*or*, the sum of £——- sterlg, to be a chge upon & raisable & payable out] of the trust moys, stks, funds, secs, & ppty comprd in or subjt [or wch, by means of the accruer of other ppty under the provon in the sd indre contd for the settlemt of after-acquired ppty of me, the sd B., or orwise (*a*), shl at any time hrafter become subjt] to the trusts of the sd indre of settlemt (*b*), *or*, "all & singr the trust funds & ppty comprd in or subjt [or wch by means, &c., *as above*]

of aliquot share
or, fixed sum,
or, all the remaining funds.

(*a*) It might be better, in view of the possibility of an addition being made to the settled funds after the date of the appointment by means of a bequest or gift of money to be held on the trusts of the settlement, to omit the words "or otherwise" here, in order that the appointment may not extend to such added fund. If a fund has already been added to the settled funds by any such means it should of course be specifically noticed: see *Re Curteis*, 14 Eq. 217.

As to subsequent addition to the settled funds.

(*b*) The following addition is adapted to the case of the appointment extending to a further share by way of accruer in the event of a younger child who is under age dying without attaining a vested interest: "AND further that in case the sd X. shl die before attaing the age of 21 yrs, & witht havg been married, then & in such case (subjt & witht prejudice as afsd) a further one eql —— share of one eql —— share of one eql —— share (makg one eql —— share) of the sd trust funds & premes after deductg from such last mentd one —— share any sum or sums wch may have been pd or applied out of the sd trust premes for the advancemt or benefit of the sd X., & after addg to such one —— share any accumulons of surplus income wch may have arisen from the expectant share of the sd X., after providg for her maintce & educon, shl from & after the solemnison of the sd intd marre belong to & be vested in the sd C., & be held in trust for her, her exs, ads & assns absolutely, & shl be transferable to her or them upon the dece of the survor of the sd A. & B. or upon the dece of the sd X., wch shl last happen, in addon to the one —— share hinbfe apptd to the sd C., so as to make the total share of the sd C. in that event one eql —— pt of the sd trust premes, after makg such dedons or addons (if any) as last afsd."

Form providing for accruing share.

to the trusts of the sd indre of settlemt, & wch shl remain after satisfyg a certain previous apptmt in favour of X., one of our chn, made by a deed poll under our respive hands & seals, dated, &c.," shl, from & after the solemnison of the sd intd marre of the sd C. & D., belong to & be vested in the sd C., & be held in trust for the sd C., her exs, ads, & assns absolutely (*c*), & shl be transferable, [*or*, raisable & payable] to her or them forthwith upon the dece of the survor of us, the sd A. & B. (*d*) [with intt from such dece until the raisg & paymt thof at the rate of 4 p.c. p.a.]. [*If the whole of the remaing funds are to be apptd, subjt to a limon of the total amt, add*, PROVD ALWAYS, & the sd A. & B. do hby declare, that not more than the sum of £—— sterlg is in any event intd to be hby apptd, & that in case by means of the accruer of other ppty, wch shl become subjt to the sd provon for the settlemt of after-acquired ppty of the sd B. or orwise the trust funds & ppty subjt to the trusts of the sd indre of settlemt, & now remaing unapptd, shl exceed such sum, then the sum of £—— sterlg only shl upon the death of the survor of them, the sd A. & B., be raised & pd to the sd C., her exs, ads, or assns, with intt, &c., & that the residue of the sd trust premes, after satisfyg the sd previous apptmt, & raisg such sum of £——, & intt, shl remain unaffected by these psnts]. *Apptmt to be void if marre does not take place: see last Precedent.* IN WITS, &c. (*e*).

Proviso limiting total amount appointed.

As to separate use.

(*c*) If the fund is not intended to be settled, but to belong to the daughter absolutely for her separate use, this had better be expressed, notwithstanding the Married Women's Property Act, 1882, by adding here, "for her septe use independently of any husband;" see *infra*, SETTLEMENTS.

Payment during appointors' lifetime.

(*d*) If authorised by the power (as to which see Vaizey on Settlements, Vol. II., 1218) the following may be added here to enable the fund to be transferred to the appointee in the lifetime of the appointors: "or sooner if we or the survor of us shl by deed revocable or irrevocable so appt or direct;" or a power of advancement, if authorised, may be inserted with the same object; see above, p. 80, note.

(*e*) Notice of this appointment should be given to the trustees of the settlement.

IV.

APPOINTMENT, *endorsed on the* SETTLEMENT *creating the power, to a* SON *on his* MARRIAGE, *of the* SHARE *which he would have taken in* DEFAULT *of any* APPOINTMENT, *subject to the* DEDUCTION *of a sum* ADVANCED *to him during his* MINORITY.

TO ALL, &c., the within named A., & B., his wife, formerly L. within named, resply send greetg. WHAS the marre of the sd A. & B. was duly solemnised shortly after the date of the within written indre : AND WHAS there have been issue of such marre seven chn, includg a son C., who has attned the age of 21 yrs : AND WHAS in the yr —— the sum of £—— was, with the consent of the sd A. & B., raised out of the trust funds comprd in the within written indre & applied for the advancemt of the sd C. & the expses incident thto, & advancemts have also been & may hrafter be made in favour of others of the sd chn in respt of their expectant shares of the sd trust funds under the power in that behalf within contd : *Intd marre of C. with D.*, p. 82 : *Desire to appt*, p. 79 : NOW THESE PSNTS WITS that in exercise, &c., the sd A. & B. do hby, subjt & witht prejudice to their respive life intts under the trusts of the within written indre, absolutely & irrevocably appt to the sd C., in the event of the sd intd marre of the sd C. & D. being duly solemnised within six calr months from the date of these psnts, such a pt or share of the trust moys, stks, funds, secs, & ppty wch are now or may hrafter be comprd in or subjt to the trusts of the within written indre (inclusive of the sum of £—— so pd or applied for the advancemt of the sd C. as afsd, & of any other sums wch have been or may be advanced for the benefit of any of the sd chn under the powers afsd, & inclusive also of income & accumulons of income), as the sd C. wd take or be entld to, if no apptmt were made by the sd A. & B., or the survor of

Recitals. Marriage. State of family. Advancement to appointee and other children. Witness. Appointment subject to life interests, and if marriage take place, of the share which the appointee would have taken in default of appointment.

them, under eir of the powers by the same indre given to them, or the survor of them, in that behalf, & the whole of the sd trust premes were to devolve under the trusts in the sd indre contd in default of any exercise of eir of such powers, & so as to be divisible in eql shares among the chn of the sd A. & B., who, being sons or a son, attn the age of 21 yrs, or being daurs or a daur, attn that age, or marry under that age, regard being had to the advce wch has been made of the sum of £—— for the benefit of the sd C., & as pt of his share as afsd, & wch is to be brought into hotchpot, & acctd for by him in the same mner as if no apptmt had been made as afsd, & regard being also had to any other advcemts wch have been or may be made under the afsd power in that behalf, & to the operon & effect of that power, & the powers & provons for maintce & educon, & the accumulon & destinon of surplus income contd in the sd settlemt or arisg by statute, wch shl resply remain exercisable & applicable in all respts in the same mner as if this apptmt had not been made, to the intent that the share wch the sd C. wd have so taken in the sd trust premes as afsd, shl become & be an absolutely & indefeasibly vested & transmissible intt immedly on the solemnison of the sd intd marre, & be transferable to the sd C., his exs, ads, or assns immedly on the dece of the survor of the sd A. & B., or as soon aftwds as such share shl be ascertained, & the case will admit. In wits, &c. (*a*).

Advancements to be brought into hotchpot.

(*a*) Although the appointment is endorsed, formal notice of it had better be given to the trustees.

V.

APPOINTMENT *under a* POWER *in a* WILL *by a* HUSBAND *and* WIFE, *subject to their* LIFE INTERESTS, *of* TRUST FUNDS *invested in* STOCK *and on* MORTGAGE, *to* CHILDREN, *so as to* EXCLUDE *one who is otherwise provided for* (*b*), *the* FUNDS *being appointed* UNEQUALLY. PROVISIONS *for* ADVANCEMENT, MAINTENANCE, *&c.* VARIATIONS *where the* FUNDS *are appointed to all the* CHILDREN (*exclusive of one*), *born and to be born, at twenty-one or marriage* EQUALLY, *and where a power of* REVOCATION *is reserved.*

TO ALL TO WHOM THESE PSNTS SHALL COME, A., of, &c., & B., his wife, send greetg. WHAS X., of, &c., deced, duly made his will dated, &c., & thby bequed the sum of £—— Reduced £3 p.c. annies to trees upon trust eir to permit the same to remain in its then state of investmt, or with such consent, or at such discron as thrin mentd from time to time to vary & transpose the investmt thof as thrin expd, And upon further trust to pay the income thof to the sd A. durg his life, & after his dece to the sd B., if she shd survive him, durg her life, And after the dece of the survor of the sd A. & B., in trust, *for their chn as A. & B. shd by deed appt, settg out the material pt of the power fully,* & in default of any such appmt as the survor of them, the sd A. & B., shd by deed or will appt, & in default of any such apptmt upon the trusts thrin expd: *Death of testor & probate:* AND WHAS N. & O. & P. are the psnt trees of the sd will, the sd O. & P. havg been resply appted trees thof under a power in that behalf thrin contd in the place of L., one of the origl trees, who has died, & M., anor of such trees, who has retired from the treeship:

Recitals.

Will.

Change of trustees.

(*b*) See above, p. 75, note.

Change of investment.

And whas the sd sum of £—— Reduced £3 p.c. annies was in the yr —— sold out, & pt of the proceeds thof invested in the pchase of £—— India Stk, & £—— the residue thof was invested on mtge of certn freehd ppty at ——, & the sd trust funds & mtge secy are now vested in the sd N., O., & P., upon the trusts of the sd will: And whas there have been issue of the marre of the sd A. & B. four chn & no more, namely, C., D., E. & F., all of whom are now livg, & of whom the sd C. & D. have attained the age of 21 yrs: And whas the sd A. & B. are desirous of apptg the sd trust funds among the sd D., E., & F., in mner hinafter appearg, the sd C. being orwise provd for: NOW THESE PSNTS WITS that, in exercise of the power in that behalf given to them by the sd will of the sd X., & of every, &c., the sd A. & B. do hby [absolutely & irrevocably] appt that from & immedly after the dece of the survor of them, the sd A. & B., & in the meantime subjt and witht prejudice to their respive life intts in the sd trust premes, the trees or tree for the time being of the sd will shl hold the sd respive sums of £—— India Stk, & £—— invested on mtge as afsd, or other the trust funds & ppty wch by means of any change of investmt or orwise shl hrafter represent the same resply, & the income thof, In trust for & for the absolute benefit of the sd D., E., & F., in the proportions & mner follg, namely, as to one moiety of the sd trust premes, in trust for the sd D., his exs, ads, & assns; as to one eql fourth pt thof, in trust for the sd E., his exs, ads, & assns; & as to the remaing one fourth pt thof, in trust for the sd F., her exs, ads, & assns: [*Or*, in trust for all the chn or any the child already born or hrafter to be born of the sd A. & B. his wife (other than & exclusive of the sd C.), who, being a son or sons, [has or have attnd or] may hrafter attn the age of 21 yrs, or being a daur or daurs, [has or have attnd or] may hrafter attn that age, or may marry, their, his, or her respive exs, ads, & assns, if more than one in eql shares], And so that the share of the sd F. [& of any other daur hrafter born of them, the sd A. & B.,] of

Issue of marriage.

Desire to appoint.

Appointment.

To three children unequally,

or, to all the children, except one, equally at 21, &c.

Shares of daughters to be for

& in the sd trust premes, shl be for her septe use, independently of any husbd whom she may marry (*a*) : AND the sd A. & B. do hby further declare that, *provons for advancemt & maintce & accumulon as to minors, as in a settlemt* (*b*) : [*Or*, AND the sd A. & B. do hby further declare that all the powers & provons in the sd recited will contd for the advcemt (whether in the lifetime or after the dece of the sd A. & B. resply), & maintce & educon of minor chn, & the accumulon & applicon of surplus income of the shares of minors, shl be applicable to the shares hinbfe apptd in the same mner as if the same or the like powers & provons had been hrin inserted, or as near thto as may be]: [PROVD ALWAYS, & the sd A. & B. do hby declare, that it shl be lful for them the sd A. & B. at any time or times hrafter durg their jt lives, by any deed or deeds revocable or irrevocable, [or for the survor of them at any time or times durg his or her life, in like mner or by will or codl], wholly or partially to revoke the apptmt hinbfe contd (*c*), & by the same or any

separate use.

Provisions for advancement, maintenance, &c.

Power of revocation.

(*a*) Where an appointment is made so as to exclude an eldest son, and the younger children are all under age, provision should be made for the possibility of their all dying without attaining a vested interest, by appointing the fund in that event to the eldest son. As to the frame of a trust of this kind, or excluding a son or daughter succeeding to the family estate, or a title, see *infra*, SETTLEMENTS.

Younger children not attaining vested interests

(*b*) The advancement, maintenance and accumulation clauses in a settlement or will are usually only applicable to the shares taken in default of appointment, and they should therefore be inserted in an appointment, when required (see *infra*, SETTLEMENTS); or the clauses for these purposes contained in the original settlement or will might usually be incorporated by reference, as in the text. As to the inexpediency of relying on the provisions of s. 43 of the Conv. Act, 1881, as to maintenance and accumulation, having regard to the serious doubt raised by *Re Jeffery* [1891], 1 Ch. 671 (dissented from in *Re Burton* [1892], 2 Ch. 38), see SETTLEMENTS. It should be borne in mind that where (as in this Precedent) both parents are living, if the mother is restrained from anticipation, or has a reversionary life interest governed by the old law, so that she could not release her life interest, the power of advancement should (if authorised by the power) extend to the shares of adults, according to the common form: see 3 Dav. Prec., p. 173.

As to advancement, maintenance and accumulation clauses.

(*c*) The following is another form which may be substituted from this point, but the above form seems preferable:—" So & in such mner

Alternative form.

other like instrumt to appt & declare any new or other trusts or provons concerng the sd trust funds & premes, or any pt thof, wch may be or wd have been authorized by the power by the sd will given to the sd A. & B. [or the survor of them] in that behalf as afsd (*d*).] IN WITS, &c. (*e*).

VI.

REVOCABLE APPOINTMENT *under* POWER *in* SETTLEMENT *of* PERSONALTY, *excluding eldest* SON, *some of the* CHILDREN *being under age.* VARIATIONS, *where there has been a previous absolute* APPOINTMENT *to one of the* CHILDREN, *and where the* SHARE *of a* CHILD *dying in the* LIFETIME *of the* PARENTS *is to go over to his or her* ISSUE, *or to the other* CHILDREN.

Recitals.

TO ALL, &c., A., of, &c., & B., his wife, send greetg. *Recite settlemt on marre of A. & B., contg usual power of*

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that the sd trust funds & premes shl so far as such revocon shl extend, stand settled in the same mner & subjt to the same power [or powers] of apptmt as if these psents had not been exted."

Power of revocation.

(*d*) A power of revocation may be reserved although not expressly authorised: Sug. Pow., 367. But as the original power is fiduciary and not capable of delegation or extension (see above, p. 76), the power of revocation must not as regards the person to whom it is given, or the mode of execution (namely by deed or will), go beyond the original power; it may be reserved to the survivor of the appointors where this accords with the original power (*Brudenell* v. *Elwes*, 7 Ves. 382; Sug. Pow. 364; *Dixon* v. *Pyner*, W. N. 1886, p. 88; 30 Sol. J. 433); but if the original power was given to the husband and wife jointly, and to the husband if he survived, a power of revocation reserved to the wife if surviving would be bad. It is desirable also that the appointment should, as regards the formalities of execution, conform to the original power, though this is not essential: see Sug. Pow. 366. As to the effect of a power of revocation, see *Evans* v. *Saunders*, 6 De G. M. & G. 654; 8 H. L. Ca. 721.

(*e*) Notice of this appointment should be given to the trustees of the will.

apptmt among the chn or remoter issue of marre, ante, pp. 77—78, *that there have been issue six chn, C. (eldest son), D., E., F., G., & H., of whom F., G., & H. are under* 21 (*a*) [*previous apptmt to D. (a daur), of one-fifth of trust funds on her marre*]. *Psnt state of investmt of trust ppty:* AND WHAS the sd C., the eldest son of the sd A. & B., being orwise sufftly provd for, the sd A. & B. are desirous that the whole of [the residue remaing unappted of] the sd trust funds & ppty shl be secd to their chn [or remoter issue] exclusive of the sd C., in such mner & subjt as hinafter appears: NOW THESE PSNTS WITS that in exercise of the power for that ppose given to them by the hinbfe recited indre of settlemt as afsd, & of every, &c., the sd A. & B. do hby direct & appt that the trees or tree for the time being of the sd indre of settlemt shl from & after the death of the survor of them, the sd A. & B., & in the meantime subjt to their respive life intts [*in case the whole or pt of the ppty in settlemt is revy, say,* & subjt to any subsistg prior life or other intt or intts in the same] stand possed of the whole of [the residue now remaing unappted of] the trust funds & premes comprd in or wch are now or hrafter may be subjt to the trusts of the sd settlemt in trust for such of them, the sd D., E., F., G., & H., as, being male, have attnd or shl attn the age of 21 yrs, or being female, have attnd or shl attn that age or marry under that age, if more than one in eql shares, & as to such of them as are female for their respive septe use independently of any husbd: [*Or, if there has been a previous apptmt to one of the chn (D.), who is only to participate in any accrug share,* in trust for the sd E., F., G. & H., their respive exs, ads, & assns, in eql shares, *as to females for septe use*: PROVD ALWAYS, & the sd A. & B. do hby further appt & direct, that if any of them, the sd F., G., & H., shl die, being male, under the age of 21 yrs, or

Desire to appoint.

Witness.

Appointment, subject to life interests, of trust funds

to children.

Variation.

Accruer on death under age or unmarried.

(*a*) See above, p. 80, note, as to the case of the younger children being all under age. This Precedent assumes that there will be no more children. For a form extending to future born children, see the last Precedent.

being female, under that age & unmarried, then the share as well origl as accrug under this psnt clause of such one of them so dying shl accrue & go over to the others or other of the sd D., E., F., G., & H., their, his, or her respive exs, ads, & assns, in eql shares. *The follg is a form of accruer clause, to be substituted for the above accruer clause, where the power of apptmt extends to grandchn, & it is desired to give over the share of any child dying in the lifetime of the parents to his issue, or in default of issue to the other chn* (*b*) :

Accruer on death of child in parent's lifetime or under age and without issue.

"PROVD ALWAYS, & the sd A. & B. do hby further appt & declare, that if any of them, the sd E., F., G., & H., shl die durg the lifetime of the sd A. & B., or of the survor of them, leavg a child or chn who shl be livg at the dece of such survor, or if any of them shl die after the dece of such survor, under the age of 21 yrs, & leavg a child or chn, then such child or chn shl take in eql shares if more than one, the share or shares (whether origl or accrug) as next hinafter provd, wch their parent wd if livg have been entled to, & further that if any of them, the sd E., F., G., & H., shl die durg the lifetime of the sd A. & B., or of the survor of them, witht leavg issue who shl be livg at the dece of such survor, or if any of them shl die after the dece of such survor under the age of 21 yrs & witht leavg issue, then the share as well origl as accrug under this psnt clause of such one of them so dying shl accrue & go over to the others or other of the sd D., E., F., G., & H., their, his, or her respive exs, ads, & assns, in eql shares."] *Provons for advemt & maintce, &c., see last Precedent. Power of revocon, see above*, p. 91. IN WITS, &c. (*c*).

As to above proviso.

(*b*) This mode of settlement, by which the share of a child predeceasing the tenant for life is given over, is not to be recommended. The ordinary trust whereby a child attaining 21, &c., takes an absolutely vested interest which he or she may settle on marriage, is much to be preferred. See SETTLEMENTS.

(*c*) Notice of the appointment should be given to the trustees of the will.

VII.

APPOINTMENT *under the usual* SPECIAL POWER *to* CHILDREN, *postponing the* VESTING *as to* SONS *to* 25 *as far as the* LAW *permits, and* SETTLING *the shares of* DAUGHTERS *on them for* LIFE *with a* CONTINGENT *power of* APPOINTMENT *over the corpus.* ACCRUER *clause* (*a*).

KNOW, &c., that we, A., & B., his wife, in exercise, &c., hby appt that subjt & witht prejudice to the trusts in the sd settlemt contd in relon to the income of the trust funds & ppty for the time being subjt to the trusts thof durg the lives of us the sd A. & B., & the life of the survor of us, the trust funds & premes wch were thby settled by or on the pt of me the sd A., or the trust ppty wch shl for the time being represent the same, & the income thof shl be held upon the trusts follg (that is to say) one eql —— pt or share thof shl belong to & be held in trust for each of our sons, *names*, in case he shl attn the age of 25 yrs, or shl be livg at the expiron of 21 yrs from the death of the survor of us, the sd A. & B.: PROVD ALWAYS, & we further appt &

Appointment, subject to life interests, of trust funds.

Shares of sons to vest at 25, &c

(*a*) As to postponing the vesting of the sons' shares beyond 21, having regard to the rule against perpetuities, see p. 75. As to the daughters' shares, the above form of trust is adapted to the case where the power is exercisable in favour of children only, and not grandchildren; so that a trust in remainder for the children of a daughter cannot be inserted; but although a *special* power of appointment in favour of children cannot be given to a daughter, a *general* power of appointment may be validly given to her, exercisable by deed or will, see *Phipson* v. *Turner*, 9 Sim. 227; *Slark* v. *Dakyns*, 15 Eq. 307; 10 Ch. 35; but the power must not be made exercisable by will only, *Wollaston* v. *King*, 8 Eq. 165; *Morgan* v. *Gronow*, 16 Eq. 1. The power is made contingent on the daughter having issue (keeping within the necessary limits as to perpetuity), so as to enable her to provide for such issue, but excluding her from having any power of disposition in the converse event. If the original power extended to grandchildren, a direct trust in remainder for the daughters' children might be substituted, restricted so as to vest within 21 years from the death of the survivor of the appointors; see as to the precautions to be observed, above, p. 75; and as to the restraint on anticipation, see p. 76.

Restrictions as to perpetuity, &c.

Adult sons to receive income of their shares.

declare that after the dece of the survor of us, the sd A. & B., the income of the expectant share of any of our sd sons who shl have attnd the age of 21 yrs, but shl not have attnd a vested intt under the apptmt hinbfe contd, shl be pd to him while the vestg of his share shl remain in suspense (*b*). [*Provons for maintce of sons durg minority, & advcemt, see* p. 91: And we further appt & declare that (subjt & witht prejudice as afsd) one eql —— pt or share of the sd trust premes shl be appropriated to each of our daurs, *names*, Provd that the share hinbfe directed to be appropriated to each of our sd daurs shl not vest absolutely in her but shl be held by the trees or tree for the time being of the within written indre (subjt as afsd) upon the trusts follg, that is to say, Upon trust to pay the income thof to such daur durg her life & so that in the event of her being under coverture the same shl be for her septe use & so that durg her coverture & within the period of 21 yrs from the death of the survor of us the sd A. & B., she shl not have power to anticipate the same, And from & after the death of such daur in case such daur shl have any chn or child or remoter issue who shl be livg at her death or at the expiron of 21 yrs from the death of the survor of us the sd A. & B. (wchever shl first happen) then & in such case In trust for such pson or psons & for such pposes as such daur shl by any deed or deeds revocable or irrevocable or by will or codl appt: Provd always & we further appt that in case the trusts & provons hinbfe decld & contd concerng any share in the sd trust premes wch is hinbfe apptd in

Daughters' shares settled on them for life,

with general power of appointment contingent on leaving issue.

Accruer clause.

Alternative method.

Trust for maintenance and accumulation.

(*b*) In lieu of this mode of dealing with the income of the shares of adults during the suspense of vesting, a trust for maintenance and accumulation might perhaps be inserted by an extension of the ordinary minority clause; but *qu.* whether this would be free from objection with reference to the Thellusson Act (see *Wilson* v. *Wilson*, 1 Sim. N. S. 288); and *qu.* whether such a discretionary trust would be a valid delegation of the power in the absence of the usual words specifically authorising a provision for maintenance at the discretion of the trustees to be inserted. See p. 76. The above clause excludes the rule of construction (applied in *Re Orme*, 1 Ir. Ch. R. 175, see Elph. N. & C. Interp. Deeds, 388) as to a gift of interim income vesting a gift otherwise contingent.

favour of any of our sd sons & daurs shl wholly or partially fail, then the share as to wch there shl be such failure shl (subjt to the trusts, powers, & provons hinbfe contd concerng the same so far as the same shl take effect or be exercised) go & accrue by way of addon in eql shares & proportions to the other shares hby apptd, & so that every such accrug share shl be subjt to the same contingencies, trusts, powers, & provons (includg this psnt clause of accruer) as the share to wch the same shl be added. *Power of revocon.* In wits, &c. (*c*).

VIII.

DEED POLL *making a Previous Revocable* Appointment *under a* Special Power *absolute by means of a* Release *of the* Power *of* Revocation (Endorsed *on the* Appointment).

KNOW ALL MEN, &c., that I, the within-named A., by virtue of every or any power enablg me in this behalf, whether under the within-mentd indre of settlemt or orwise, do hby absolutely rele & give up the power of revocon in the within-written deed poll contd, to the intent that the apptmt thrin contd in favour of the within-named B., his exs, ads, & assns, shl become & be henceforth absolute & indefeasible (*d*). In wits, &c. Release of power of revocation.

(*c*) Notice of the appointment should be given to the trustees.

(*d*) Another way is to reappoint to the appointee "dischged from the power of revocon & new apptmt" contained in the previous deed; but the form in the text is preferable. The requirements as to attestation, &c., as in the case of the original appointment, should be observed. See p. 80, note.

IX.

DEED POLL *making a Revocable* APPOINTMENT *among* CHILDREN *absolute as to one* CHILD *in* CONTEMPLATION *of his or her* MARRIAGE—*one of the* APPOINTORS *being a* MARRIED WOMAN (*a*).

Recitals. Treaty for intended marriage.

TO ALL, &c., A., of, &c., & B. his wife send greetg. *Recite settlemt creatg power; that C. is one of the chn of A. & B.; previous revocable apptmt among chn:* AND WHAS a marre is intd shortly to be solemnised betn the sd C. & D., of, &c., & upon the treaty for such intd marre it was agrd that the sd A. & B. shd revoke the apptmt in the hinbfe recited deed poll contd, to the extent & in mner hinafter appearg, & shd make such new apptmt in favour of the sd C. as is hinafter contd, to the intent that the same shl be absolute & irrevocable, but subjt to the provo hinafter contd for avoidg these psnts in the event hinafter mentd: NOW

Witness.

THESE PSNTS WITS that in psuance of the sd agrmt, & in exercise of the power for this ppose reserved to them

Partial revocation.

by the hinbfe recited deed poll as afsd, & of every, &c., the sd A. & B. do hby revoke & make void the apptmt made, or

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As to release of power by a married woman.

(*a*) It being considered that a married woman before the Conv. Act 1881, s. 52, was not competent to *release* a power (see Sug. Pow. 92) except in cases coming within the Fines and Recoveries Act, 3 & 4 Wm. 4, c. 74, or 20 & 21 Vict. c. 57 (Malins' Act); and that until it has been decided that the Conv. Act, 1881, s. 52, and the Conv. Act, 1882, s. 6, apply to married women, it would not be safe to rely on them as removing the disability of coverture (see *Chorlton* v. *Lings*, L. R. 4 C. P. 374; *The Queen* v. *Harrald*, L. R. 7 Q. B. 361; the case of *Re Onslow*, 39 Ch. D. 622, did not turn on this point, though it was mooted in argument); and inasmuch as the Married Women's Property Act, 1882, although it empowers a married woman to dispose of her own separate estate, and to enter into contracts (under which she might possibly validly covenant not to exercise a power) does not remove her disability to *release* a power, at any rate such as this, the object is in this case effected by a partial revocation and reappointment, instead of by a release as in the last Precedent.

expd to be made, by the sd deed poll, so far as regards the one eql —— pt or share thby appted, or expd so to be, in favour of the sd C. of the trust funds & ppty comprd in the sd settlemt: AND THESE PSNTS FURTHER WITS that in exercise of the power or powers for this ppose given to them by the hinbfe recited indre of settlemt, & of every, &c., the sd A. & B. do hby direct & appt that the trees or tree for the time being of the sd indre of settlemt, shl from & after the death of the survor of them, the sd A. & B., & subjt to any prior life or other intt in the same, stand possed of the one eql —— pt or share wch was by the hinbfe recited deed poll appted to the sd C., & the apptmt whof is hinbfe revoked, of or in the sd trust funds & ppty comprd in the sd settlemt, in trust for the sd C., her exs, ads, & assns absolutely, And to be an immedly vested & transmissible intt accdly: PROVD ALWAYS that nothg hrin contd shl affect the apptmt in the sd deed poll of, &c., contd, except so far as the same is hinbfe revoked: *Provo avoidg deed in case of marre not takg place, see Precedent* II. (*b*). IN WITS, &c.

Further witness.

Absolute appointment of share to C.

Saving clause

X.

PARTIAL REVOCATION *of a* PRIOR APPOINTMENT *and* RE-APPOINTMENT *securing to a* CHILD ON MARRIAGE *a* SUM *of* MONEY *in lieu of his or her* ALIQUOT SHARE (*c*).

TO ALL, &c., A., of, &c., & B., his wife, send greetg. *Recitals & first witsg clause contg revocon of apptmt to C., the child about to marry, as in Precedent* IX. AND THESE PSNTS FURTHER WITS that in exercise, &c., the sd

Partial revocation.

(*b*) Notice of the deed should be given to the trustees of the settlement.

(*c*) For forms modifying settlements by a partial exercise of a power of revocation, see SETTLEMENTS.

A. & B. do hby revoke & make void the trusts & provons by & in the hinbfe recited deed poll contd of & concerng the trust funds & premes thby appted in favour of the chn of the sd A. by the sd B., other than the sd C., as far & to such extent as is necy to give effect to the apptmt hinafter contd but not further or orwise, AND under or by virtue of the power contd in the hinbfe recited indre of settlemt & of every, &c., do hby, &c., *Apptmt of sum of moy to C., see Precedent* III. PROVD ALWAYS that nothg hrin contd shl affect, &c., *as in last Precedent. Provo avoidg deed in case of marre not takg place, see Precedent* II. IN WITS, &c. (*a*).

Appointment.

Saving clause.

XI.

APPOINTMENT *by a* FATHER, TENANT *for* LIFE *of Settled Real* ESTATES, *to one of his younger* CHILDREN, *of part of a* SUM *of* MONEY *raisable for* PORTIONS *and secured by a* TERM *in the usual manner.*

Recitals.

Settlement creating power (*b*).

TO ALL, &c., A., *tenant for life*, sends greetg. WHAS by an indre, &c., being a settlemt exted in contemplon of a marre wch was shortly aftwds solemnised betn the sd A. & B., certain —— & hds, in the parishes of —— & —— in the coy of ——, were assured & limd after the solemnison of the sd marre (among other uses not material to be hrin recited), to the use of the sd S. & T., their exs, ads, & assns, for the

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(*a*) Notice of the deed should be given to the trustees of the settlement.

Variation for supplemental deed.

(*b*) If the appointment is made by supplemental deed (see p. 77, note), substitute for the recital of the settlement:—"WHAS these psnts are supplemtal to an indre, &c., being a settlemt on the marre of the sd A. of the —— este, &c., under wch he has a power of apptmt over a sum raisable for portions of his yor chn under the trusts of a term of 1000 yrs."

term of 1000 yrs, to commce from the death of the sd A., witht impeachmt of waste, upon trust, *recite trusts of portions term, down to & includg the power of apptmt among the yor chn;* AND WHAS there have been issue of the sd marre six chn, besides some who died in infancy & unmarried, that is to say, an eldest son & five yor chn, one of whom attnd his age of 21 yrs, & aftwds died, & the others of whom are all under that age & unmarried; AND WHAS a marre is intd shortly to be solemnised betn C., one of such yor chn, & D., of, &c., & in order to make provon for the sd C. on her marre, the sd A. is desirous of apptg the sum of £——, pt of the sum wch, in the event, will become raisable for portions under the sd term of 1000 yrs, to or in favour of the sd C., in mner & subjt as hinafter mentd: NOW THESE PSNTS WITS that in exercise of the sd recited power & of every, &c., the sd A. doth hby irrevocably appt that, in case the sd intd marre of the sd C. shl take place within six calr months from the date hrof (*c*), the sum of £——, being a pt or share of the sum wch, in the event, will become raisable for portions under the trusts of the sd term of 1000 yrs as afsd, shl, immedly after the sd intd marre of the sd C., belong to & be vested in the sd C. for her absolute benefit, & that the same shl be payable to her, or her exs, ads, or assns, upon the death of the sd A., with intt at the rate of 4 p.c. p.a. from his death until paymt thof [*if raisable immedly,* shl be raisable & payable to her, or her exs, ads, or assns, immedly after such marre, with intt at the rate of 4 p.c. p.a. to be computed from the sd marre] (*d*). IN WITS, &c. (*e*).

State of family.

Intended marriage.

Desire to appoint.

Appointment of share.

(*c*) See above, p. 83, note (*f*).

(*d*) As to the power of the appointor to charge interest and to fix the rate, see Sug. Pow., p. 697; *Balfour* v. *Cooper*, 23 Ch. D. 472.

As to charging interest.

(*e*) Notice of this deed should be given to the trustees of the term.

XII.

POST-NUPTIAL APPOINTMENT *by a* MARRIED WOMAN *of* LIFE INTEREST *in* PERSONALTY *to her* HUSBAND *under a* POWER *in a* WILL. VARIATIONS *where the appointment is* REVOCABLE, *and for an* ANTE-NUPTIAL APPOINTMENT, *and where the* LIFE INTEREST *is determinable on* BANKRUPTCY, &c. (*a*).

Recitals. Will.

TO ALL, &c., I, A., the wife of B., of, &c., send greetg. WHAS X., late of, &c., deced, by his will dated, &c., & proved on the —— day of —— in the —— Registry, bequed the sum of £—— to trees upon trust for my benefit durg my life & after my dece upon the trusts thrin mentd, subjt to a power thby given to me by deed to appt from & after my dece the whole, or such pt as I shd think fit, of the annl income of the sd legacy, or the trust funds representg the same, for the benefit of any husbd I might leave survivg me durg his life, or for any less period, & subjt to

Desire to appoint.

any restrons I might think fit: AND WHAS I am desirous of exercisg the power of apptmt reserved to me by the sd will as afsd in mner [& subjt as] hinafter expd: NOW THESE PSNTS WITS that, in exercise of the power for this ppose given to me by the sd will as afsd & of every other power, &c., I hby appt that from & after my dece, if my husbd the

Appointment to husband for life.

Variation for ante-nuptial appointment.

(*a*) If the appointment is ante-nuptial, it will recite the intended marriage, and that "upon the treaty for the sd intd marre it was agrd that the sd A. shd make such apptmt as is hinafter contd"; and the appointment will be expressed to be "in conson of the sd intd marre"; see SETTLEMENTS. If the husband's life interest is to be determinable on bankruptcy or alienation, the form will be the same as in a settlement limiting a reversionary life interest so determinable (see SETTLEMENTS); but the discretionary trust usually added to give a protected life interest must not be inserted, unless specially authorised by the power, as this would be bad as amounting to a delegation of the power (see above, p. 76).

As to determinable life interest to husband.

sd B. shl survive me, the whole of the income of the sd legacy of £——, or of the trust funds & premes for the time being representg the same, shl be pd to my sd husbd or his assns durg his life : [PROVD ALWAYS & I declare that it shl be lful for me at any time hrafter by deed wholly or partially to revoke the apptmt hinbfe contd] (*b*). IN WITS, &c. Power of revocation

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XIII.

APPOINTMENT *under a general* POWER *in a* WILL *of* FREEHOLDS *in fee, subject to the* LIFE ESTATE *and* FAILURE *of* ISSUE *of the* APPOINTOR, *a* MARRIED WOMAN, PART *of the property being appointed to her* HUSBAND, *and the* REMAINDER *to a* TRUSTEE *in trust for the* SEPARATE USE *of another* MARRIED WOMAN. VARIATION *where the legal* ESTATE *is in* TRUSTEES. POWER *of* REVOCATION.

TO ALL TO WHOM THESE PSNTS SHALL COME, A., the wife of B., of, &c., sends greetg. WHAS X., late of, &c., deced, made his last will, dated, &c., & thby, among other disposons, devised certn freehd messes, lands, & hds, situate in the parishes of, &c., in the coy of, &c., thrin more parlarly descd, to the use of [trees in trust for] the sd A., *for life remr to her issue, & in default of issue as she shd by deed or will appt, settg out the power fully*, with remrs over: *Death of X., & probate:* AND WHAS the sd A. is desirous of makg such apptmt of the sd hds as is hinafter contd; NOW THESE PSNTS WITS that the sd A., in exercise of the power for that ppose given to her by the sd recited will & of every, &c., doth hby [absolutely & irrevocably] appt & direct that from & after the dece of her, the sd A., & in case the limons [trusts] in the sd will Recitals. Will. Death, &c. Desire to appoint. Appointment.

(*b*) Notice of this deed should be given to the trustees of the will.

contd of the sd hds & premes after her dece & precedg the power of apptmt limd to her as afsd shl fail, the sd hds & premes shl be & remain to the uses [*if the legal este is in trees*, shl be held upon the trusts] follg, that is to say: As to all that, *pcels* (*a*), being pt of the sd devised premes, to the use of [in trust for] the sd B., his hrs & assns for ever: And as to all & singr other the hds & premes devised by the sd will as afsd to the use of [in trust for] L., the wife of M., of, &c., her hrs & assns, as her septe ppty, independently of the sd M. or any future husbd: Provd always, that it shl be lful for the sd A., at any time or times hrafter by any deed or deeds, revocable or irrevocable, or by will or codl (*b*), to revoke or alter, eir wholly or partially, all or any of the [uses &] trusts hinbfe appted & decld of or concerng the sd hds & premes or any pt thof, & to limit, appt, or declare any new or other [uses] trusts or provons concerng the same or any pt thof. In wits, &c. (*c*).

As to part to husband.

Residue to a married woman.

Power of revocation.

XIV.

REVOCATION *of* APPOINTMENT *of* LEASEHOLDS *under a general* POWER *in a* WILL, *and new* APPOINTMENT *thereof to the* ISSUE *of the original* APPOINTEE *upon his* DECEASE.

TO ALL TO WHOM THESE PSNTS SHALL COME, A., the wife of B., of, &c., sends greetg. *Recite will bequeathg leasehd ppty to trees in trust for A. for life for her septe use, remr as she may appt by deed or will, in default*

Recitals. Will, &c.

General words.

(*a*) The general words may be omitted, as an appointment is a conveyance within s. 6 of the Conv. Act, 1881. See s. 2.

(*b*) That a mere general devise would not operate as an exercise of this power, see *Pomfret* v. *Perring*, 5 De G. M. & G. 775; *Palmer* v. *Newell*, 20 Beav. 32; *Re Brace*, [1891] 2 Ch. 671.

(*c*) If the legal estate is in trustees, notice of this deed should be given to them.

in trust as thrin mentd; apptmt of exors; death of testor & probate; assent of exors to bequest; previous revocable apptmt to C.: AND WHAS the sd C. has, since the sd apptmt to him was exted, died, leavg a son & two daurs him survivg, namely, D., E., & F., all of whom are now under the age of 21 yrs: *Desire to revoke & reappt:* NOW THESE PSNTS WITS that in exercise of the power for that ppose reserved to her by the sd deed of apptmt & of every, &c., the sd A. doth hby absolutely revoke & make void the sd apptmt to the sd C., & in lieu thof she, the sd A., doth hby, in exercise of the power for that ppose given to her by the sd will & of every, &c. [absolutely & irrevocably] appt & direct that all & singr the sd leasehd premes or other the ppty wch may hrafter by means of any sale, investmt, or orwise, be substituted for the same or any pt thof, & the rents & income thof shl from & after the dece of her, the sd A., be held by the trees or tree for the time being of the sd will in trust for such one or more of the sd D., E., & F., as shl attn the age of 21 yrs, or in the case of the sd E. & F. shl marry, & their respive exs, ads, & assns, if more than one in eql shares, as tenants in common: PROVD ALWAYS, & the sd A. doth hby further appt & direct, that in case the sd D. shl die under the age of 21 yrs, & both of them the sd E. & F. shl die under that age, & witht havg been married, then from & after the dece of the sd A., & such default or failure of issue of the sd C., wchever shl last happen, the sd trust premes, & the rents and income thof, togr with all accumulons, or so much thof as shl not have been applied or disposed of under the trusts or powers for advcemt & maintce hby [or by law] vested in the sd trees or tree, shl be held in trust for X., of, &c., his exs, ads, & assns absolutely: PROVD ALWAYS that the apptmt hinbfe contd shl not affect the powers of leasg, sale, investmt, & transposg investmts contd in the sd will, & that the same respive powers shl continue in force & exercisable durg the minority of the sd D., or the minority & discoverture of the sd E. & F. resply, in the same mner as if the same or the

Death of previous appointee.

Revocation.

New appointment.

Provision for death of all appoint-ees under 21, &c.

Proviso keeping alive and extending powers of leasing, &c., in will.

like powers had been hrin repeated or as near thto as may be : *Provons for advcemt & maintce & accumulon of surplus rents & income : see* SETTLEMTS, *& above*, p. 91. IN WITS, &c. (*a*).

XV.

APPOINTMENT *by* DONEE *of* GENERAL POWER *of a residuary estate in his own favour* (*b*).

Recitals. TO ALL, &c., A., of, &c., sends greetg. *Recite will bequeathg a sum in trust for A. for life, with remr on such trusts as he may by deed or will appt : death & probate :* AND WHAS the sd A. has determined to exercise the power of apptmt given to him by the sd will as afsd in mner hinafter

Appointment. expd : NOW THESE PSNTS WITS that, in exercise, &c., the sd A. doth hby irrevocably appt & direct that the residy este of the sd testor & the investmts & ppty constitutg or representg the same shl belong to & be vested in him the sd A., his exs, ads, & assns absolutely, & that the same shl be forthwith pd or transferred to him the sd A., his exs, ads, or assns accdly. IN WITS, &c.

(*a*) Notice of this deed should be given to the trustees of the will.

Tenant for life with general power of appointment. (*b*) It is not uncommon for a tenant for life to have a general power of appointment by deed or will over the reversion. In such a case it sometimes conduces to simplicity and saves trouble if he makes the property his own by an appointment of this nature. But *qu.* whether an appointment of this kind might not in some cases increase the duty ultimately payable; see *A.-G.* v. *Mitchell*, 6 Q. B. D. 548.

XVI.

DEED POLL *by* DONEE *of* GENERAL POWER *of* APPOINTMENT *over* REAL ESTATE *exercisable by* DEED *only, to enable him to exercise it by* WILL.

TO ALL, &c., A., of, &c., sends greetg. WHAS under & by virtue of an indre dated, &c., and expd, &c., divers estes & hds situate, &c., stand limd & settled, (subjt to certn chges & incumbces affectg the same or some pts thof,) To such uses, upon such trusts & subjt to such powers & provons as the sd A. shl by any deed or deeds, revocable or irrevocable, direct or appt, & in default of such apptmt To the uses in the sd indre of settlemt expd: AND WHAS the sd A. is desirous of availg himself of the power of apptmt given to him by the sd indre of settlemt as afsd, for the ppose of enablg him by will or codl to chge the sd settled estes or any of them in mner hinafter mentd: NOW THESE PSNTS WITS that in exercise of the power given to him by the sd indre of settlemt as afsd & of every, &c., the sd A. doth hby appt that it shl be lful for him, the sd A. by his will or any codl thto to chge all or any of the estes, lands, tenemts & hds comprd in the sd indre of settlemt, or wch by any means are or shl be subjt at law or in equity to the subsistg uses or trusts thof, with such annl & gross sums & other moys (whether in the way of ppal or intt), as he, the sd A., shl think fit, & for the ppose of raisg or securg such annl or gross sums or other moys or any of them, or in relon thto, to limit, create, declare or make any powers, estes, terms, trusts or provons whatsr: PROVD ALWAYS, & the sd A. doth hby declare that the power of apptmt reserved to him by the sd indre of settlemt as afsd shl remain & continue exercisable by him, the sd A., by deed in the same mner as if these psnts had not been exted. IN WITS, &c. (*c*).

Recitals. Settlement. Desire to appoint. Appointment enabling appointor to charge the settled estates by will. Power in settlement to remain unaffected.

(*c*) Notice of this deed should be given to the trustees.

XVII.

APPOINTMENT *by deed of a* GUARDIAN *by a* FATHER (*a*), *for his infant* SON *and* DAUGHTER, *after his decease.*

Appointment. KNOW ALL MEN BY THESE PSNTS, that I, A., of, &c., hby appt B., of, &c., to be the gdian of my son, R., & daur, S., *or*, "hby dispose of the custody & tuition of my son R., & daur S., to B., of, &c.," from & after my death durg the minority of my sd son & daur resply: BUT in case the sd B. shl die in my lifetime or durg the minority of my sd son or daur, or shl refuse to act, then I appt C., of, &c., to be the gdian of them resply after my death & the death or refusal to act of the sd B., durg their respive minorities. IN WITS, &c.

Substitution.

XVIII.

APPOINTMENT *under seal of a* GUARDIAN *by an* INFANT (*b*).

Appointment. KNOW, &c., that I, A., an infant of the age of — yrs, eldest son of B., late of, &c., deced, hby elect & appt my uncle C., of, &c., to be gdian of my pson & este until I shl attn the age of 21 yrs. IN WITS, &c.

Appointment of guardian by infant father.

(*a*) An infant father, though now incapacitated from making a will, can appoint guardians by deed, 12 Car. 2, c. 24, s. 8; but the appointment must be subject to the rights conferred on the mother by the Guardianship of Infants Act, 1886, 49 & 50 Vict., c. 27, ss. 2 and 3. The execution should be attested by two witnesses; but *qu.*, see *Morgan* v. *Hatchell*, 19 Beav. 86. As to the right of a father to determine the religion in which his children shall be brought up after his death, see *Re Scanlan*, 40 Ch. D. 200.

(*b*) See Simpson on Infants, p. 195.

XIX.

APPOINTMENT *of a* GAMEKEEPER *by a* LORD *of a* MANOR (*c*).

KNOW, &c., that I, A., of, &c., lord of the manor of ——, in the coy of ——, do hby (by virtue of the statute in that behalf) appt & depute B., of, &c., to be my gamekeeper within the sd manor durg my pleasure, & to preserve the game within the limits of the sd manor: AND I hby give him full power & authority [to kill the game within the limits of the sd manor for my use, *or*, "for his own use, or for the use of any other pson or psons whomsr," And also] to seize & take within the sd limits for my use, *or*, "for his own use," &c., all such dogs, nets, & other engines & instrumts for the killg & takg of game as shl be used upon the sd lands by any pson not authorised to kill game for want of a game licence, AND further to do & exte all acts & things wch may be requisite for the preservon of the game within the sd manor, & for the discovery of offenders thrin, accdg to the laws of this realm, & for wch this shl be his sufft warrant. IN WITS, &c.

Appointment.

Power to kill game and seize engines, &c.

XX.

APPOINTMENT *of a* PARISH CLERK (*d*).

KNOW, &c., that I, the Rev. A., vicar, [*or*, rector] of the parish church of ——, in the coy of ——, do hby

(*c*) See 1 & 2 Will. 4, c. 32, ss. 13, 14, 16, and as to Wales, s. 15; the appointment must be registered with the Clerk of the Peace for the county or place within which the manor is situate (s. 16). As to game licences, see 23 & 24 Vict. c. 90; as to licences to carry a gun, see 33 & 34 Vict. c. 57, ss. 1-5. As to the right of an occupier to kill ground game see the Ground Game Act, 1880, 43 & 44 Vict. c. 47.

(*d*) As to Parish Clerks, see Stephen's Comm., vol. ii., p. 713. A

Appointment. nominate & appt B., of, &c., to be parish clerk of the sd parish church [in the room of C., deced], to have & exte the sd office by himself, [his deputy or deputies] durg the term of his life, & durg the same time to rece & take all such

Fees. wages, fines, fees, dues, profits, & emolumts as belong, & are, & shl be due to the sd office, & of rt ought to belong to the same in as full & ample a mner as [the sd C. or] any of his predecessors, clerks of the sd parish church, have had or ought to have had as due & of rt accustomed. In wits, &c.

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mandamus lies to a rector to appoint a parish clerk, *Rex* v. *St. Anne's, Soho*, 3 Burr. 1877; and to restore a parish clerk, but not a deputy parish clerk, to his office, *Rex* v. *Warren*, Cowp. 370, *Anon.*, Lofft, 434. It is therefore not unusual for an incumbent to appoint some friend as parish clerk, and for the latter to appoint a deputy, who performs the duties of the office and who can be removed at any time. As to the right to appoint during a sequestration, see *Lawrence* v. *Edwards*, [1891] 1 Ch. 144.

APPOINTMENTS OF NEW TRUSTEES.

PRELIMINARY NOTE.

Statutory provisions as to appointments of new trustees; Conv. Act, 1881, s. 31.

The Conv. Act, 1881, 44 & 45 Vict. c. 41, has (by s. 71) repealed the power of appointing new trustees contained in Lord Cranworth's Act, 23 & 24 Vict. c. 145, s. 27, and (by s. 31) re-enacted it with amendments. The power applies to the case of a trustee dying (expressly including (sub-s. 6) in the case of a will, death in the testator's lifetime), remaining out of the United Kingdom for more than twelve months (a case not provided for by the repealed Act), desiring to be discharged, or refusing or being unfit or incapable to act. The power is vested in the person or persons, if any, nominated for the purpose by the instrument, if able and willing to act, or otherwise in the surviving or continuing trustees or trustee (which by sub-s. 6 includes a refusing or retiring trustee if willing to act, differing in this respect from the repealed Act), or the personal representatives of the last surviving or continuing trustee. The statutory power applies although the deceased or outgoing trustee was appointed by the Court (s. 31, sub-s. 1); and by s. 33 trustees appointed by the Court (whether before or after the Act) have all the same powers (including of course the powers of s. 31) as if they had been originally appointed by the instrument creating the trust.

Increase or reduction in number.

The Act provides (s. 31, sub-ss. 2, 3, which provision was not in the repealed Act) that on an appointment being made the number of trustees may be increased or reduced, but not to less than two unless only one trustee was originally appointed.

It is further provided (by s. 32, which provision also was not in the old Act), that, where there are more than two trustees, one of them may, with the consent of his co-trustees and the person empowered to appoint new trustees, be discharged without the appointment of a new trustee in his place.

Operation of Act on previous instruments.

All the above provisions are to apply to instruments executed before as well as since the Act (except so far as they are excluded or varied by the terms of the instrument); but the repeal (by s. 71) of the clause in Lord Cranworth's Act is not to affect the operation of instruments executed before the late Act. In the case of a settlement or will executed before 1882, and incorporating wholly or partially, and whether by express reference or not, the power in the repealed Act, the new enactments will apply as supplemental to the former, if and so far as there is nothing in the terms of the instrument inconsistent with such application, so as to enable a new trustee to be appointed in place of one who has gone to reside abroad (*Re Walker*, 24 Ch. D. 698, where the persons nominated

by the settlement, in 1878, to appoint new trustees, were held to be the proper persons to exercise the power of the Act of 1881; *Re Coates*, 34 Ch. D. 370), or the number of trustees to be increased or reduced, or a trustee to be discharged without appointing a new one in his place; and the statutory provisions will also operate by way of extension of an express power contained in the instrument in the absence of an indication of a contrary intention (*Cecil* v. *Langdon*, 28 Ch. D. 1; *Re Coates, ubi sup.*); and the statutory power has been held to be free from a fetter as regards consents imposed by the express power (*Cecil* v. *Langdon, ubi sup.*), or by special Act of Parliament (*Re Lloyd*, 32 Sol. J. 221), and to be exercisable where a husband and wife, joint donees of an express power, were living apart and unable to agree as to the appointment (*Re Sheppard*, W. N. 1888, 234).

Case of concurrent powers of appointment.

The saving clause in s. 71 of the Act of 1881, by which the repeal of the power in Lord Cranworth's Act is not to affect the operation of instruments executed before the repeal, seems to keep alive that power in cases in which it had been incorporated expressly or by implication in previous instruments, and if so an appointment of new trustees ought in such case to be made under the repealed clause, and not under the new one, even where they are concurrent; but as some practitioners (it is believed) hold the contrary view, it may be better in that case to refer to the statutory power in general terms. Where advantage is taken of the Act of 1881 as extending or supplementing the Act of 1860, the reference should be to both Acts, or to "the statute or statutes," generally; see form II., *infra*.

Case of trustees predeceasing testator.

Although the statutory power (as well as the ordinary express power) provides for the case of a trustee of a will predeceasing the testator, and in case of the death of all the trustees is exercisable by the personal representatives of the last survivor, it seems doubtful whether it would be available in case all the trustees should predecease the testator: *Re Orde*, 24 Ch. D. 271; but see *Re Ambler*, 32 S. J. 541; 59 Law T. 210. A disclaiming trustee is conceived to be undoubtedly a refusing trustee within the statutory or the ordinary express power, although by the effect of the disclaimer he technically never became a trustee; see Lewin on Trusts, 738. As to a trustee becoming bankrupt, see the Bankruptcy Act, 1883, s. 147; the statutory power, which includes "unfitness," would usually be available in case of bankruptcy; *Re Adams*, 12 Ch. D. 634.

Trustee disclaiming,

or becoming bankrupt,

or lunatic.

In the case of a lunatic trustee (whether so found or not), where there is no available express power, and the case is not within Lord Cranworth's Act of 1860, a new trustee may be appointed by the continuing trustees under s. 31 of the Conv. Act, 1881; and a vesting declaration may be made under s. 34 of that Act if applicable (*Re Blake*, W. N. 1887, p. 173); or a new trustee may be appointed and a vesting order made by the Judge in Lunacy under the Lunacy Act, 1890, 53 Vict. c. 5, ss. 135—143; by which Act (s. 342) the corresponding provisions of the Trustee Acts, 1850 and 1852, have been repealed (except as to Ireland); see also the definition of "land" in s. 341 of the Act of 1890, and of "seised" and "possessed," in the Lunacy Act, 1891, 54 & 55 Vict. c. 65, s. 28. The general power of appointing new trustees in Chancery under the Trustee

Acts, 1850, s. 32, and 1852, s. 9, is also available if need be; as to the jurisdiction under the Acts of 1850 and 1852, it was considered that any incapacity arising from mental decay or infirmity, although not such that the trustees would be found lunatic by inquisition, was "unsoundness of mind" within those Acts, so that the jurisdiction was in Lunacy (*Re Martin*, 34 Ch. D. 618, contrary to the opinion expressed in *Re Phelps*, 31 Ch. D. 351) and not (as in *Re Lemann*, 22 Ch. D. 633) in Chancery; but see s. 52 of the Act of 1850, which was not adverted to in *Re Martin*; and *qu.*, as to the effect of the Act of 1890 in this respect; see the definition of "lunatic" in s. 341. Where the incapacity though physical is not mental the jurisdiction was and presumably still is in Chancery: *Re Barber*, 39 Ch. D. 187. As to making a vesting order without appointing a new trustee, see *Re Leon*, [1892] 1 Ch. 348, *infra*, p. 115. As to the case of the donee or one of the donees of the power of appointment being lunatic, see *infra*, p. 114.

Appointment by retiring or refusing trustee.

Where the power of appointment is vested in the continuing trustees, a retiring or refusing trustee is not a continuing trustee within the meaning of the power, and need not join in the appointment (*Re Norris*, 27 Ch. D. 333; *Re Coates*, 34 Ch. D. 370, following *Travis* v. *Illingworth*, 2 Dr. & Sm. 344, and dissenting from dicta in *Re Glenny*, 25 Ch. D. 611); and a lunatic (*Re Blake*, W. N. 1887, p. 173) or bankrupt trustee whose place is to be filled is in the same position. But a retiring trustee would of course usually be a party to signify his desire to retire. Where the power provides (as in the Conv. Act, 1881, s. 31, sub-s. 6) that a continuing trustee shall be deemed to include a retiring or refusing trustee if willing to join, an appointment in place of a trustee who has been abroad for more than twelve months without his concurrence will be *primâ facie* good (*Re Coates, ubi sup.*); and it would seem that a trustee who is displaced on the ground of absence abroad is not a "retiring" trustee at all, as it is immaterial whether he consents to retire or not, so that the appointment would not be invalidated by proof that he was competent and willing to join. The provision enabling a retiring trustee to appoint is useful on the retirement of a sole trustee or of all the trustees simultaneously, as it enables the appointment to be made without the circuity of two deeds, which would otherwise be necessary. A power given (as in the Act of 1881) to the personal representatives of the last surviving or continuing trustee is exercisable by the representatives of a sole trustee (*Re Shafto*, 29 Ch. D. 247). The representatives of a deceased trustee are of course not bound to exercise such a power, and may reasonably refuse to assume the responsibility of so doing, and will not be chargeable with the costs occasioned by their refusal (*Re Knight*, 26 Ch. D. 82); if they do make the appointment, it is desirable to get the principal beneficiaries to join in the deed to testify their approval.

By representatives of deceased trustee.

Representatives of last surviving trustee,—to what extent trustees.

Trusts and powers in settlements and wills are frequently expressly continued to the representatives (real or personal as the case may be) of the last surviving trustee; and even where a trust is vested in the "trustees or trustee for the time being" (*Re Morton*, 15 Ch. D. 143) or in "the acting trustees" (*Re Cunningham*, [1891] 2 Ch. 567), it may be executed by the heirs of the survivor; but although in such a case the representatives

may be enabled to execute the trusts partially or even wholly, this does not of course constitute them trustees of the instrument except in a limited sense (see as to this Lewin on Trusts, p. 534; Dart, 682), so that new trustees in that case must be appointed in the place of the deceased trustees, and not of the representatives of the last survivor of them.

Donee of power of appointing or consenting of unsound mind.

Where the donee of the power of appointing or consenting to the appointment is a lunatic so found, the power of appointment (if it is vested in the lunatic in the character of a trustee or guardian), or of consenting to the appointment, may be exercised by the committee by the authority of an order of the Judge in Lunacy under the Lunacy Act, 1890, ss. 128, 129 (see *Re Garrod*, 31 Ch. D. 164, decided under the repealed Lunacy Regulation Act, 1853, which contained similar enactments); and if the donee of the power is a trustee, a vesting order may be made under s. 129, or ss. 135—140. The appointment may also (where a vesting order is required and can be made under the Act) be made by the Judge in Lunacy under s. 141, which applies whether the lunatic has been so found or not (see ss. 129 and 135—140, and the definition of "lunatic" in s. 341); and would be available where one of several trustees donees of the power is lunatic. The general powers of making appointments and vesting orders contained in the Trustee Acts, 1850, ss. 32 and 34 and 1852, s. 9, may also be had recourse to if applicable (see as to the jurisdiction above, p. 113). And where there is an express power, but it is not available, the appointment may admit of being made under the Conv. Act, 1881, s. 31; see *Cecil* v. *Langdon*, 28 Ch. D. 1; *Re Sheppard*, W. N. 1888, 234.

Power not affected by alienation of interest.

Where the power of appointing or consenting to the appointment of new trustees is vested in the tenant for life or other beneficiary, it is not affected by the alienation (whether partial or total) of his interest, and is exercisable without the consent of the alienee: *Hardaker* v. *Moorhouse*, 26 Ch. D. 417.

Effect of action for administration.

The pendency of an action for administration of the trusts under the Court does not displace the power, but after a decree or order for administration has been made it can only be exercised subject to the approval of the Court (*Re Gadd*, 23 Ch. D. 134; *Thomas* v. *Williams*, 24 Ch. D. 558; *Re Norris*, 27 Ch. D. 333); except in the case of an old suit or action, which, though technically alive, is practically at an end. Where there is no action, the exercise of the power cannot be interfered with by the Court under the powers of the Trustee Act, 1850, or otherwise: *Re Higginbottom*, [1892] 3 Ch. 132.

Who should be appointed.

Under the ordinary express or the statutory power there is of course no invalidity in the appointment of one of the beneficiaries, or a female, or a person living abroad, although such an appointment would not in general be made by the Court. As to the appointment by the Court of a person resident abroad, see *Re Freeman*, 37 Ch. D. 148; and of a beneficiary who is also a donee of the power, see *Tempest* v. *Lord Camoys*, W. N. 1888, p. 17. The donee of the power cannot appoint himself: *Re Skeats*, 42 Ch. D. 522. As to the appointment by the Court of the nominees of a company, who guarantee the due performance of the trusts, see *Re Brogden*, W. N. 1888, p. 238.

Increase or reduction in number of trustees.

Although the power usually authorises the number of trustees to be increased on an appointment, and this is expressly provided for by the statute, the number cannot (in the absence of express authority, which is rarely given, and is not given by the statute) be increased by appointing an additional trustee except on an appointment to fill a vacancy (*Re Gregson*, 34 Ch. D. 209), so that this could only be effected by the circuity of two deeds; but the Court has jurisdiction to make such an appointment (*Re Brackenbury*, 10 Eq. 45; *Re Gregson, ubi sup.*). A reduction in the number may also usually be effected either on the occasion of an appointment to fill a vacancy (whether under the statutory or ordinary express power), or by the retirement of a trustee without a fresh appointment (under s. 32 of the Act of 1881); and although it would not of course usually be proper to reduce the number below two, and under the statutory power this could not usually be done (see above), under an express power worded in the ordinary form such a reduction would not invalidate the appointment (see *West of England Bank* v. *Murch*, 23 Ch. D. 138). Although orders to the contrary have been made in some cases, the more recent practice of the Court has been not to remove a lunatic, bankrupt, or absconding trustee by appointing the other trustees to be trustees to his exclusion; the more proper course being to keep up the number by appointing a new trustee in his place (*Re Aston*, 23 Ch. D. 217; *Re Lamb*, 28 Ch. D. 77; *Re Gardiner*, 33 Ch. D. 590); *secus*, where the whole fund is immediately distributable (*Re Martyn*, 26 Ch. D. 745); and where the trusts are being administered by the Court and the funds when received by the trustees are to be paid into Court (*Davies* v. *Hodgson*, 32 Ch. D. 225); and under the Lunacy Act, 1890, 53 Vict., c. 5, ss. 135, 136, a vesting order was made where there were four trustees without appointing a new one; *Re Leon*, [1892] 1 Ch. 348.

Appointment of separate trustees for part of the trust property held on distinct trusts.

By the Conv. Act, 1882 (45 & 46 Vict., c. 39), s. 5 (which also applies to trusts previously created), it is provided that on an appointment of new trustees the trusts may be severed by the appointment of separate trustees for any part of the trust property held on distinct trusts; and this applies although in a certain event the trusts may coalesce (*Re Hetherington*, 34 Ch. D. 211). It was held that new trustees could not be appointed under that enactment as to a part of the property, unless an appointment was made at the same time of new trustees of the other part (*Savile* v. *Couper*, 36 Ch. D. 520; *Re Nesbitt*, 19 L. R. Ir. 509; contrary to the opinion expressed in *Re Paine*, 28 Ch. D. 725); but by the Conv. Act, 1892, 55 & 56 Vict., c. 13, s. 6, the Act has been extended so as to enable this to be done. The Court possesses jurisdiction in this respect under the Trustee Act, 1850, s. 32 (*Re Moss*, 37 Ch. D. 513).

Trustees for the purposes of the Settled Land Act, 1882.

Where by the Settled Land Act, 1882 (45 & 46 Vict., c. 38), s. 2 (8), or (in the case of a settlement by way of trust for sale), by s. 63 (1), the trustees are also made trustees for the purposes of the Act, newly appointed trustees will necessarily, by virtue of the appointment, become trustees for the purposes of the Act without the insertion of any express words to that effect in the appointment (see s. 31 (5)). In *Re Wilcock*, 34 Ch. D. 508, it was doubted whether the power of appointing new trustees in the Conv. Act, 1881, s. 31, applied to trustees appointed by

the *Court* under the Settled Land Act, s. 38. Having regard to ss. 31 (1, 5) and 33 of the Conv. Act, 1881 (see above), and to the definition in s. 2 of the word "instrument" as including "Act of Parliament," it is difficult to see that there was any ground for this doubt; but it has now been removed by the Settled Land Act, 1890 (53 & 54 Vict., c. 69), s. 17, enacting that all the powers and provisions of the Conv. Act, 1881, as to the appointment of new trustees and the discharge and retirement of trustees are to apply to trustees for the purposes of the Settled Land Acts, 1882 to 1890, whether appointed by the Court or not.

Clause enabling trust estate to be vested by declaration.

The Conv. Act, 1881, contains a further important clause (s. 34) enabling the appointor upon the appointment of a new trustee to make a declaration operating to vest the trust estate in the continuing and new trustees without any conveyance or assignment; and providing that the like declaration may be made by the retiring and continuing trustees and the person empowered to appoint new trustees, where a trustee is discharged under s. 32 without appointing a new trustee in his place.

Vesting declaration, how far applicable.

This enactment applies to "any estate or interest in land" (as that word is defined in section 2), or "in any chattel," and "the right to recover and receive any debt or other thing in action"; but sub-s. 3 does not extend to the legal estate in copyholds, or to legal mortgages, or to shares, stock, &c., transferable only in books kept by a company or other body, or in manner prescribed by Act of Parliament.

What may be included therein.

Although it would have been better if the property as to which a vesting declaration may be made had been described by a short form of words of the most sweeping and general import, comprising real and personal estate of every description, and not depending on a definition (with the necessary exceptions), the expressions used in the Act (which are partly taken from the enactments in the Trustee Act, 1850, as to vesting orders by the Court) are sufficiently comprehensive, since they include land of every tenure (except the legal estate in copyholds and in mortgaged land) and incorporeal hereditaments; chattels personal, such as furniture and heirlooms; legal debts and choses in action, such as gross and annual sums secured by bond or covenant (including a debt secured by mortgage, although the legal estate in the land cannot be vested under the Act), and policies of assurance; equitable choses in action, such as a reversionary interest in personalty, a share of a residuary estate, or a merely equitable interest in a mortgage (where the security is legally vested in third parties, as in the case of a contributory mortgage), or an equitable mortgage (the legal estate being outstanding in a prior mortgagee or otherwise). As regards equitable interests, although a formal conveyance or assignment is usual, especially in the case of real estate, there is no absolute necessity for it, as the right passes to the new trustees by virtue of their appointment. Shares, stocks, and debentures, &c., of companies and public bodies must be transferred in the usual way. Securities "to bearer" must of course be transferred by actual delivery, and should be deposited in a bank or otherwise so as to be under the joint legal control of all the trustees.

Cases where declaration

Where the property is vested by a declaration containing only a general description, it may be convenient to some extent to follow the

language of the Act in the description, except that (a caution which the writer has found to be by no means superfluous) the draftsman must beware of using the word "land" alone as descriptive of hereditaments, since that word would not of course in a deed have the comprehensive import which is given to it in the Act (s. 2). contains only a general description.

The means of vesting the trust estate by declaration is specially valuable where the outgoing trustee is under incapacity or absent; but it would have been more so if, instead of excepting copyholds, the clause had enabled the appointor to convey them, or to nominate some other person to do so, by analogy to the Trustee Act, 1850; and if the exception of mortgages had also been omitted. The latter exception was evidently inserted with reference to the practice of taking and transferring mortgages to trustees without disclosing the trust; but there was no need for the exception, as it is in the option of the appointor to use the Act or not; and there is no apparent reason why he should not have the power to do so in this case, especially as a vesting order under the Trustee Act necessarily discloses the trust. These two exceptions necessitate applications to the Court for vesting orders where they might have been saved; but the exception of stocks and shares, &c., appears to be inevitable, as an order of the Court could scarcely, with safety, be dispensed with in those cases. Vesting declaration where outgoing trustee under incapacity or absent.

An order vesting the trust estate or appointing a person to convey or transfer it may be made in case of lunacy under the Lunacy Act, 1890 (see above, p. 112), where a new trustee has been previously appointed by deed (*Re Vicat*, 33 Ch. D. 103; *Re Jones, ib.*, 414; *Re Batho*, 39 Ch. D. 189, where two new trustees had been appointed in place of one lunatic and another abroad, cases decided under the repealed sections of the Trustee Act, 1850); and this may be made available in the case of mortgages or copyholds or stocks which cannot be vested by declaration under the Conv. Act. But under ss. 34 and 35 of the Trustee Act, enabling such orders to be made in Chancery on an appointment of new trustees by the *Court*, there is no jurisdiction to do so where the trustee has already been validly appointed by *deed*, and the Court will not reappoint the trustee in order to lay a foundation for making a vesting order; *Re Vicat, ubi sup.*; *Re Dewhirst*, 33 Ch. D. 416, overruling *Re Dalgleish*, 4 Ch. D. 143; and see *Re Batho, ubi sup.* This may possibly in some cases cause difficulty. Cases where new trustee has been previously appointed by deed.

The power to vest the trust estate by declaration is also valuable in the following cases:—where the trustees are all dead, and there is no representative of the last surviving trustee, or his concurrence cannot be obtained; where all the trustees have disclaimed; and where (as sometimes happens) the legal estate has not been properly conveyed on a former appointment of trustees, in which case, although the vesting declaration must be contained in the same deed as the appointment, there seems no reason why it should not be efficaciously made on a subsequent appointment. As to the form of order of Court vesting the legal estate in land where there is no representative of the surviving trustee, having regard to s. 30 of the Conv. Act, 1881, see *Re Pilling*, 26 Ch. D. 432; *Re Williams*, 36 Ch. D. 231; which may serve as a guide for framing a vesting declaration in the like case. Other cases where vesting declaration useful.

Case of trustee being a married woman.

The vesting of the trust estate by declaration may also occasionally be usefully adopted where a married woman is a trustee, to save the expense of acknowledgment, the provision in the V. and P. Act, 1874, 37 & 38 Vict., c. 78, s. 6, enabling a married woman to convey trust estates as if she were sole, applying only where she is a bare trustee (as to which see *Christie* v. *Ovington*, 1 Ch. D. 279; *Morgan* v. *Swansea, &c., Authority*, 9 Ch. D. 582; *Re Docwra*, 29 Ch. D. 693; *Re Cunningham*, [1891] 2 Ch. 567; and see the use of the expression "bare trustee" in the Charitable Trusts Act, 1853, 16 & 17 Vict., c. 137, s. 50); and it is doubtful whether the case is altered by the Married Women's Property Act, 1882, 45 & 46 Vict., c. 75, as until it has been so decided it cannot be treated as clear that that Act applies to land vested in a married woman as a trustee.

Vesting declaration must be contained in the same deed.

The vesting declaration must be contained in the *same* deed by which the new trustee is appointed, or the retiring trustee is discharged under s. 32; but in the latter case the property can be vested by conveyance, as the retiring and continuing trustees must all be parties to the deed. The declaration is to vest the property in "the persons who by virtue of the deed become and are the trustees for performing the trust," as joint tenants.

As to use of vesting declaration in practice.

The vesting declaration has so much advantage in point of simplicity, brevity, and adaptability to various cases over a conveyance of the trust estate in the old form, that it has come into considerable use in practice in preference to the other method.

In construing the above enactments in the Conv. Acts, it must, of course, be borne in mind that by the Interpretation Act, 1889 (52 & 53 Vict., c. 63) s. 1, in these Acts, as in all Acts passed after 1850, the singular includes the plural, and *vice versâ*, unless a contrary intention appear.

As to the appointment of new trustees of land held in trust for religious or educational purposes, see the Trustees Appointment Acts, 1850 to 1890, namely, 13 & 14 Vict., c. 28 (Peto's Act), 32 & 33 Vict., c. 26, and 53 & 54 Vict., c. 19, by s. 3 of which the power of appointment contained in the Conv. Act, 1881, is made applicable.

As to the appointment of new trustees on summons see R. S. C., Order 55, rule 13A.

Trustee retiring where breach of trust contemplated.

As to the responsibility of a trustee who retires with the knowledge that his retirement is likely to be followed by a breach of trust, see Lewin, 752, and cases there referred to; and as to the duty of an incoming trustee to see that the trust estate is in a proper state of investment, see Lewin, 217; and as to his freedom from responsibility in respect of incumbrances affecting the trust estate which are not disclosed to him, though known to the retiring trustee, see *Hallows* v. *Lloyd*, 39 Ch. D. 686.

Stamps.

As to the stamp duty on appointments of new trustees, see the Stamp Act, 1891, Sched. tit. APPOINTMENT; *Hadgett* v. *The Commissioners, &c.*, 3 Ex. D. 46; 4 Dav. Prec., 609.

Costs of appointment.

As to the costs of the appointment, see *Harvey* v. *Olliver*, W. N. 1887, p. 149; 31 Sol. J. 640.

See further as to appointments of new trustees, Lewin on Trusts, 728 *et seq.*; 4 Dav. Prec. 605 *et seq.*; Elph. Introd. Conv. pp. 318, 440.

CLAUSES.

Appointment of trustee where the power is contained in the settlement or will, with variations.

1. In exercise of the power for this ppose by the hinbfe recited [mentd] indre of the —— day of ——, *or*, "by the within written indre," *or*, "ppal indre," *or*, "by the hinbfe recited will of the sd X.," given to the sd, *donee or donees of power*, & of every or any other power enablg him [them] in this behalf he the said, *donee*, doth [they the sd, *donees*, do] hby (*a*) appt the sd, *new tree or trees*, to be a tree [trees] in the place of the sd, *deced or outgoing tree or trees*, for the pposes of the sd indre of the —— day of ——, *or*, "the within written indre," *or*, "the sd will [& codls] of the sd X.," or such of the same pposes as may be subsistg and capable of takg effect.

Appointment of trustee under statutory power (*b*).

2. In exercise of the power for this ppose by the Conveg & Law of Ppty Act, 1881 (*c*), *or*, "by statute," *or*, *if the statutory power is exply incorpd with or witht varion in the instrumt creatg the trust*, "by the jt operon of the *settlemt or will*, & the Conveg, &c., Act, 1881" (*c*), *or*, "the statute or statutes in that behalf" given to the sd, *donee or donees of power*, & of every, &c., *as in last form.*

Appointment where more than one set of trustees.

3. In exercise, &c., *as above form I. or II.*, he the sd, *donee*, doth [they the sd, *donees*, do] hby appt the sd, *new tree or trees*, to be a tree [trees] in the place of the sd, *deced or outgoing tree or trees*, for all the pposes for wch the sd, *deced or outgoing tree or trees*, was [were] appted a tree [trees] by the sd, *settlemt or will, or as the case may be*, or such, &c., *as in form I.*

(*a*) If the consent of any person is required to the appointment, add here "with the consent (hby testified) of the sd *consentg pty or pties.*"

(*b*) See above, p. 111.

(*c*) Add, where there is settled land, "and the Settled Land Act, 1890;" see above, p. 115.

Declaration vesting trust estate (*a*).

IV. The sd A. & B., *apptors*, hby declare that all & singr the hds, revy intts, policies, things in action, chattels, effects, & ppty specified in the schdle hto, & the rt to rece & recover all such things in action, *or as the case may be*, & all other (if any) lands, hds, chattels, & ppty, whether real or psonal (includg things in action, & the rt to rece & recover the same), wch are now subjt to the trusts of the sd indre of settlemt of, &c., *or*, "the sd will & codls of the sd X." (not being a legal este or intt in copyhd or customary lands or hds, & not being lands or hds vested in the sd, *outgoing & continug trees*, or any of them, by way of mtge for securg moy subjt to the sd trusts) shl vest in the sd, *continug & new trees*, their hrs, exs, ads, & assns resply (accdg to the nature of the ppty), as jt tenants for all such este & intt as the sd, *outgoing & continug trees*, or any of them had thrin resply immedly bfe the exon of these psnts, & upon the trusts & subjt to the powers & provons applicable thto resply by virtue of the sd indre of settlemt, *or*, "will & codls," or orwise.

Declaration of trust (*b*).

V. AND IT IS HBY agrd & decld that the sd, *new & continug (if any) trees*, their [hrs] (*c*), exs, ads, & assns, shl hold the sd, *stks, shares, &c.* [when the same shl have been transferred into their names], *or*, "all & singr the sd —— & premes [when the assurce & transfer thof shl have been made to them as afsd]" upon the trusts & subjt to the

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(*a*) See p. 116; and for a form where a trustee retires without a new trustee being appointed under the Conv. Act, 1881, s. 32, see *infra*, p. 144.

As to declaration of trust.

(*b*) This clause though usual is of course not necessary, as the trustees must necessarily hold the property upon the trusts whether they so declare or not. The declaration if amounting to a covenant (see *Isaacson* v. *Harwood*, 3 Ch. 225), and the deed is executed by the trustees (*Richardson* v. *Jenkins*, 1 Dr. 477), would create a specialty debt in an action for breach of trust, so as to improve the remedy against them, having regard to the Trustee Act, 1888, s. 8; but this is of small moment.

Word "heirs," when required.

(*c*) By the effect of the Conv. Act, 1881, s. 30, as modified by the Copyhold Act, 1887, s. 45, the word "hrs" is not required except in the case of copyholds to which the trustees have been admitted.

powers & provons applicable thto [or upon, & subjt to wch the same ought to be held] by virtue of the sd indre of the —— day of ——, *or*, "will [& codls] of the sd X." or orwise.

PRECEDENTS.

I.

APPOINTMENT, *by the surviving* TENANT *for* LIFE *of a Settlement of* MONEY *in the funds, of* NEW TRUSTEES *in the place of deceased or retiring trustees, the* CHANGES *of* INVESTMENT *and other dealings with the trust-funds not being fully recited (endorsed on the* SETTLEMENT) (*d*).

THIS INDRE, made, &c., BETN A., of, &c., widow, formerly B. within named, 1; C., *retirg tree*, 2; D., *continug tree*, 3; E. & F., *new trees*, 4. WHAS a marre betn the within named K. & B., now A. was duly solemnised shortly after the exon of the within written indre: AND WHAS the sd K. died on the —— day of ——: AND WHAS divers changes in the investmt of & other dealgs with the trust-funds comprd in or subjt to the trusts of the within written indre have from time to time taken place, & portions thof have been applied or disposed of for the advancemt of chn of the sd marre, & orwise, psuant to the trusts & powers of the sd indre, & the trust-funds now remaing subjt to the subsistg trusts thof consist of the sum of £—— £2 15*s*. p.c. Consold Stk, & £—— Deb. Stk of the

Recitals. Marriage. Death of husband. Present state of trust-funds.

(*d*) It is desirable that the deed should be executed by the new trustee to signify his acceptance of the office. As to the consent of a new trustee to act where the appointment is made by the Court, see R. S. C., Order 39, r. 19A. For variations where the deed is supplemental to the settlement instead of being endorsed, see above, p. 81, note; and below, Precedent VII.; as to various points of law and practice, see note above, p. 111.

Death of trustee. Desire to retire. Desire to appoint. Funds to be transferred. Appointment.

—— Rly Co. : And whas the within named L., *deced tree*, died on the —— day of —— : And whas the sd C. is desirous of being dischged from the trusts of the within written indre : And whas the sd A. is desirous of apptg the sd E. & F. to be trees of the same indre in the place of the sd L. & C. : And whas the sd respive sums of stk are intd to be forthwith transferred by the sd C. & D. into the jt names of the sd D., E., & F. (*a*). NOW THIS INDRE WITNETH that in exercise, &c., *appt by A. of E. & F. as new trees in place of L. & C.*, p. 119. *Declon of trust*, p. 120. In wits, &c. (*b*).

II.

APPOINTMENT *by* Surviving Trustee, *with the consent of the* Husband *and* Wife, *of a* New Trustee *in the place of a* Deceased Trustee *of a settlement of* Personalty, *consisting of a* Reversionary *interest in* Stock, *receivable on the death of the wife's father, an* Annuity *covenanted to be paid by the latter during his life, and a sum secured by the* Bond *or* Covenant, *and a* Policy *on the life of the* Husband. *There having been a prior endorsed appointment of a* New Trustee. Assignment *of the trust property by the* Surviving Trustee *to* Himself *and the* New Trustee (*c*). Variations

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(*a*) The transfer of the funds ought not in strict propriety to be made till after the appointment, but is sometimes made before.

Special formalities

(*b*) Where special formalities of execution are prescribed by the power, the deed may be executed according to such formalities, or in the presence of two witnesses in the ordinary mode, see 22 & 23 Vict., c. 35, s. 12. Neglect of this may invalidate the appointment.

As to form of conveyance of trust estate where there is a continuing trustee.

(*c*) By 22 & 23 Vict., c. 35, s. 21, leaseholds and personalty (other than legal choses in action) were made assignable by a person to himself jointly with another or others, so as to dispense with the necessity (which arose from the rule that a person could not convey to himself) for employing two deeds (an assignment to a provisional trustee and a re-assignment by him), in order to vest property of that description on the appointment of a new trustee, where there was a continuing trustee.

making provision for the payment of the PROFESSIONAL CHARGES *of the new trustee, who is a* SOLICITOR. (*Endorsed on the settlement.*)

PARTIES, the above named K., *the tree appted by the prior endorsed deed*, 1; the within named A., & B. his wife, formerly C. within named, 2; L., *new tree*, 3. WHAS the within named H., *deced tree*, died on the —— day of ——: AND WHAS the within named X., *wife's father*, is still livg: AND WHAS the sd K., with the consent of the sd A. & B., is desirous of apptg the sd L. to be a tree of the within written indre in the place of the sd H.: NOW THIS INDRE WITNETH that in exercise, &c., *apptmt by K., with consent of A. & B., of L. as tree in the place of H.*, p. 119: AND THIS INDRE ALSO WITNETH that in psuance of the sd apptmt, the sd K., as tree (*d*), with the consent (hby testified) of the sd A. & B., doth hby assn unto the sd K. & L.: ALL THAT the pt, share, or intt in

Recitals. Death of trustee. Wife's father living. Desire to appoint. Appointment. Assignment. Of reversionary interest.

A similar enactment is contained in the Conv. Act, 1881, s. 50, as to freeholds and things in action. The difficulty was previously got over in the case of freeholds by the aid of the Statute of Uses, but the late Act renders it unnecessary in future to have recourse to that machinery; and this assimilation of the form of conveying realty to that of personalty often enables the two to be conveniently combined in one clause. The alternative mode of vesting the trust estate by the declaration of the appointor might be used in this case; see above, p. 116, and form IV., p. 120.

(*d*) The covenant against incumbrances by the conveying parties, which it was usual to insert in the conveyance of the trust estate, is now implied by making them convey as trustees (see the Conv. Act, 1881, s. 7, sub-s. 1, F., and CONVEYANCES ON SALE), whether in a conveyance of freeholds, leaseholds, or personalty, or (having regard to the definition of "conveyance," and "convey" in s. 2) a covenant to surrender copyholds. In the common case of there being a continuing trustee, there is a formal objection to using the Act, as the statutory covenant is with all the grantees jointly (see the first paragraph of s. 7), so that the continuing trustee would be both a covenantor and covenantee; but this is disregarded in practice, the covenant being at the best of little or no value. In this work the words implying statutory covenants for title, &c., under the Conv. Act, 1881, s. 7, namely, "**as beneficial owner**," "**as trustee**," &c., are printed in distinctive type as in the text, as a reminder to the draftsman that they have a special import.

As to implied covenant against incumbrances.

revon expectant on the dece of the sd X., in the within written indre comprd & expd to be assned, of & in the within & above mentd sum of £——, &c., Stk, or the trust-funds wch may be substituted for the same & the income thof:

Annuity. AND ALSO all that the yrly sum of £—— by the within written indre covted to be pd by the sd X.: AND ALSO all

Sum secured by bond. that the within & above-mentd sum of £——, secd by the bond of the sd A., & the intt due & to accrue due in respt

Policy of assurance. thof: AND ALSO all that the within & above mentd policy of assurce on the life of the sd A., & the sum of £——, & other sums assured by or to become payable in respt thof:

Other trust-funds. AND ALL other (if any) the trust-funds and ppty whatsr comprd in or subjt to the trusts of the within written indre, or wch are now invested in the sd K. upon the trusts thof: AND the benefit of all powers & remedies for receivg, recoverg, & givg effectual rects for the sd respive premes,

Habendum on trusts of settlement. & every of them & every pt thof (*a*): TO HOLD the same unto the sd K. & L., their exs, ads, & assns, upon the trusts & subjt to the powers & provons upon & subjt to wch the same resply ought to be held by virtue of the

Power for solicitor-trustee to charge. within written indre: [AND THE sd A. doth hby covt with the sd L. that he, the sd L., shl be entled to make & rece, & that the sd A., his hrs, exs, or ads, will pay or pro-

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As to omitting the power of attorney in an assignment of a chose in action. (*a*) A power of attorney to use the name of the assignor of a chose in action may now be omitted, if express notice of the assignment is given to the debtor (which of course may be done at any time should it be necessary to sue); see the Judicature Act, 1873, s. 25, sub-s. 6. As to policies of assurance, see also the Policies of Assurance Act, 1867, 30 & 31 Vict., c. 144. In the case of this precedent the power of attorney would, even prior to those acts, have been inappropriate, as the assignor, not being an original trustee, was himself only an assignee of the bond debt and policy, and a power to use *his* name would be useless; but his assignment would pass the benefit of any power of attorney (if in proper form) contained in the assignment to him.

As to stamping assignment. As to the necessity for stamping the assignment in order to give a right to sue, and give a discharge for the policy money, see the Stamp Act, 1891, s. 118, an objectionable provision.

As to omitting "all the estate" clause. The "all the estate" clause, which if inserted, would come in here, is omitted, having regard to the Conv. Act, 1881, s. 63; see CONVEYANCES ON SALE.

cure to be pd to the sd L., all such chges & emolumnts for business done by him in relon to the exon of the trusts of the within written indre, as he wd have been entled to make & rece in respt thof, if he had not been a tree (*b*)]. IN WITS, &c. (*c*).

III.

APPOINTMENT (*by independent deed*) *of* NEW TRUSTEES *of a* SETTLEMENT *in lieu of retiring and deceased trustees* (*d*), *where the* HUSBAND *and* WIFE *are dead, and the trust* FUNDS *have been partly* DISTRIBUTED, *and the remaining part consists of* MONEY *invested on* MORTGAGE *which is transferred by a* SEPARATE DEED (*e*), *the various* DEALINGS *with the funds, and two prior* DEEDS *endorsed on the settlement, being shortly recited.*

PARTIES, L., *continng tree*, 1; K., *retirg tree*, 2; N. & Q., *new trees*, 3. WHAS by an indre, dated, &c., & expd to be made betn A., *husbd*, of the first pt, C. *wife*, then & thrin descd as B., spinster, of the second pt, & E., G., & K., of the third pt (being the settlemt made on the marre then intd, & shortly aftwds solemnised of the sd A. & C.), a sum

Recitals.

Marriage settlement.

(*b*) As to the right of a solicitor-trustee to charge, see *infra*, SETTLEMENTS. Of course this is a mere personal covenant of the tenant for life and does not affect the remaindermen.

(*c*) Notice of the deed must be given to the trustees of the reversionary interest, to the insurance office, and to the covenantor for payment of the annuity; but notwithstanding the provisions of the Judicature Act, 1873, s. 25, sub-s. 6, referred to above, p. 124, note, it can scarcely be necessary to give formal notice to the bond debtor also, as he is a party to the deed.

(*d*) See *Re Norris*, 27 Ch. D. 333, above, p. 113.

(*e*) For form of transfer of mortgage to the new trustees, framed so as to keep notice of the trust off the title to the mortgaged estate, see MORTGAGES. The mortgage cannot be transferred by the declaration of the appointor; see above, p. 116.

of £——, &c., Annies thrin stated to have been transferred into the names of the sd E., G., & K., was settled upon the trusts thrin mentd, being trusts for the sd A. & C. successively for life, with remr to the chn of the sd marre as the sd A. & C., or the survor of them shd appt, & in default of such apptmt for all such of the sd chn as being sons shd attn the age of 21 yrs, or being daurs shd attn that age or marry, in eql shares as thrin mentd: And the indre now in recital contd the usual hotchpot clause & power for the advancemt of the chn of the marre after the dece of the sd A. & C., or durg the lifetime of them or the survor of them with their, his, or her consent in writg: And it was thby decld, &c., *power to appt new trees on death or resignon vested in the husbd & wife, or the survor, & aftwds in the survivg or continug (includg retirg) trees, to be set out fully, as far as material:* And whas on the —— day of —— the sum of £——, pt of the sd sum of £—— Annies was (with the consent of the sd A. & C., testified by a deed poll under their respive hands & seals dated, &c., & endorsed on the sd indre of settlemt) sold by the sd trees (leavg the sum of £—— like Annies remaing invested in their names), & the proceeds thof were applied by them for the advancemt of D., one of the chn of the sd marre: And whas the sd C. died on the —— day of ——, witht havg concurred with the sd A. in exercisg the jt power of apptmt by the sd settlemt given to them as afsd: And whas there were issue of the sd marre three chn & no more, viz., the sd D., who attned the age of 21 yrs on the —— day of ——, S., now the wife of P., with whom she intermarried on the —— day of ——, & T., who is still an infant: And whas the sd E. died on the —— day of ——, & by an indre (endorsed on the sd settlemt) dated, &c., & expd to be made, &c., the sd L. was apptd by the sd A. to be a tree of the sd settlemt in the place of the sd E., & the sum of £——, &c., Annies, being the residue of the sd sum of £—— like Annies after the sale of £—— pt thof for paymt of expses, was thrupon transferred into the names of the sd L., G., & K.: And

Part of funds applied for advancement of a son.

Death of wife.

Family.

Death of one trustee and appointment of new trustee.

WHAS by a deed poll under the hand & seal of the sd A., dated, &c. (& also endorsed on the sd settlemt) the sd A. in exercise of the power in that behalf in the sd settlemt contd, apptd the sum of £——, pt of the sd sum of £—— Annies to the sd S., & the sd A. thby also reled to her his life intt in such appted sum: AND the balce of such sum, after payg or providg for the paymt of the succession duty payable in respt thof, was accdly, with the consent of the sd S., transferred by the sd trees to her husbd, the sd P., leavg the sum of £—— like Annies remaing invested in their names upon the trusts afsd: AND WHAS the sd L., G., & K., with the consent of the sd A., sold out the sd last mentd sum on the —— day of ——, & invested the proceeds thof in the pchase in their names of the sum of £—— Bank Stk: AND WHAS the sd A. died on the —— day of ——, witht havg exercised (save as afsd) the power of apptmt given by the sd settlemt to the survor of them, the sd A. & C.: AND WHAS upon the dece of the sd A. the sum of £——, pt of the sd sum of £—— Bank Stk, was sold out by the sd L., G., & K., & produced the sum of £——, & the sum of £—— pt thof, makg with the sum so advanced for the benefit of the sd D., as afsd, wch was brought by him into hotchpot, the amt of his share in the sd trust premes, was pd to him after deductg costs & the succession duty payable in respt thof, & the sum of £——, further pt of the sd sum of £——, makg with the sum so apptd to the sd S., & pd to the sd P. her husbd as afsd, wch was brought by them into hotchpot, the amt of the share of the sd S. in the sd trust premes, was, with her consent, pd to the sd P. after deductg costs & succession duty, & the remr of the sd sum of £——, produced by the sd sale, was applied in paymt of the succession duty payable in respt of the expectant share of the sd T. in the sd trust premes: AND WHAS the sd G. died on the —— day of ——: AND WHAS the sum of £——, the residue of the sd sum of £—— Bank Stk after such sale as afsd, was, on the —— day of ——, sold by the sd L. & K., & the proceeds thof, amtg to £——, were invested by

Appointment of sum to daughter.

Change of investment.

Death of husband.

Payment of shares to children, except an infant.

Death of another trustee.

Investment of infant's share on a mortgage.

them upon a mtge of certn freehd ppty, situate at, &c.: And whas the sd K. is desirous of being dischged from the trusts of the sd indre of settlemt, & the sd L. & K. are desirous of apptg the sd N. & Q. to be trees thof in the place of the sd G. & K.: And whas the sd sum of £—— & the secs for the same are intd to be transferred by the sd L. & K. to the sd L., N., & Q., by an indre bearg even date with, & to be exted immedly after these psnts, & expd to be made betn, &c.: NOW THIS INDRE WITNETH, &c., *apptmt of N. & Q. to be trees in the place of G. & K.*, p. 119. *Declon of trust*, p. 120, *of*, "the sd mtge debt of £—— & intt, & the secs for the same." In wits, &c.

Desire to retire.

Mortgage to be transferred by separate deed.

Appointment of new trustees.

Declaration of trust.

IV.

APPOINTMENT (*endorsed*) *by deed poll or writing not under seal* (*a*) *under a power to appoint by deed or writing, or the statutory power, of a* New Trustee *of a* Settlement *in place of a* Deceased Trustee, *where all the trust* Property *is transferred by a* Separate Instrument *or* Instruments. *A* Short *form.*

TO ALL TO WHOM THESE PSNTS SHALL COME, C., of, &c., widow, formerly D. within named, *the tenant for life*, sends greetg. *Recite marre, death of husbd, death of tree, desire to appt:* And whas the trust este subjt to or held upon the trusts of the within written indre now consists of the stks, funds, secs, hds & ppty, the short parlars of wch are contd in the schdle hto, & wch are intd to be forthwith, or as soon as may be, transferred or assured so as to be vested in the sd, *continug & new trees*, jtly: NOW THESE

Recitals

Present state of trust property.

(*a*) Although the power, whether in the instrument or the statute, may be exercisable by writing not under seal, it is better that it should be by deed, the stamp being the same.

PSNTS WITS, &c., *apptmt of new tree in place of deced tree*, p. 119. *Declon of trust*, p. 120. IN WITS, &C. Appointment and declaration.

[*Schdle.*]

V.

APPOINTMENT (*endorsed*) *of a* NEW TRUSTEE *of a* DEED (*of even date with a Marriage Settlement*) *by which* FREEHOLDS *and* COPYHOLDS *were conveyed and covenanted to be surrendered to trustees in trust for* SALE, *with a* DECLARATION *of* TRUST *of the* PURCHASE-MONEY *by reference to the settlement* (*b*). CONVEYANCE *of the trust* PROPERTY. VARIATION, *where* PART *has been sold.*

PARTIES, the within named F., *survivg tree*, 1; the within named A., *the husbd*, 2; K., *new tree*, 3. *Recital of the marre:* AND WHAS the within mentd copyhd or customary hds & premes were on the —— day of ——, duly surrendered to the use of the within named F. & G. & their hrs, psuant to the covt in that behalf in the within written indre contd, & the sd F. & G. were on the same day duly admitted thto: [AND WHAS the within mentd messe & hds, situate at ——, being pt of the freehd premes in the within written indre comprd, with the appurts, were on the —— day of —— sold by the sd F. & G., with the consent of the sd A. & C., *the wife*, & conveyed to the pchaser thof, in exon of the trusts of the sd indre]: AND WHAS [the residue of] the freehd & copyhd hds in the within written indre comprd are still unsold: *Recite deaths of C. & G., & desire to appt*

Recitals. Surrender and admittance. Sale. Present state of property.

(*b*) See the Precedents of two deeds for effecting a settlement of real or leasehold estate in this manner, *infra*, SETTLEMENTS. An appointment of a new trustee of the settlement will be executed concurrently. See next Precedent.

Appointment of new trustee.

K. in the place of the latter: NOW THIS INDRE WITNETH, *apptmt by F., with consent of A., of K. to be tree in the place of G.*, p. 119: AND THIS INDRE ALSO WITNETH that in psuance of the sd apptmt the sd F. as tree doth hby grt unto the sd F. & K. (*b*), ALL & SINGR the freehd messes, lands, tenemts, hds, & premes, situate in the respive parishes of —— & —— in the coy of ——, in the within written indre comprd or expd to be thby grted [except such pts thof as have been sold as hinbfe recited], & all other, if any, hds of freehd tenure wch are now by any means vested in the sd F., upon the trusts of the within written indre (*c*): TO HOLD the same UNTO & TO THE USE of the sd F. & K., their hrs & assns (*d*) subjt to the leases & tenancies affectg the sd respive premes, nevs upon & for the trusts & pposes upon & for wch the same premes ought to be held under or by virtue of the within written indre: AND THIS INDRE ALSO WITNETH that, in psuance of the sd apptmt, the sd F. as tree doth hby covt with the sd K., his hrs & assns, that he, the sd F., or his hrs will forthwith at the cost of the trust este surrender into the hands of the lord or lords, lady or ladies of the within mentd manor of ——, accdg to the custom thof, ALL & SINGR the copyhd or customary messes, lands, tenemts, hds, & premes in the within written indre comprd & thby covtd to be surrendered, or wch are now by

Conveyance (*a*).

Parcels.

Habendum.

To use of trustees.

Covenant to surrender copyholds (*e*).

Parcels.

(*a*) As to vesting the trust estate by declaration, see pp. 116—118.

(*b*) See above, p. 122, note.

(*c*) As to the omission of "all the estate" clause, see the Conv. Act, 1881, s. 63, above, p. 124, note; and as to the omission of the "general words," see the same Act, s. 6. The latter words are of course in a deed of this kind especially superfluous.

Form of conveyances in fee of trust estates.

(*d*) A conveyance of freeholds to trustees must (notwithstanding s. 30 the Conv. Act, 1881, carrying trust estates to the personal representatives of the surviving trustee) be made to them and their "heirs" (or, if preferred, "in fee simple," under s. 51 of the same Act), as this is essential to pass a fee simple by deed (except of course in the case of the statutory mode of vesting the trust estate by the declaration of the appointor, see p. 116). In this collection the word "heirs" is used in preference to "in fee simple."

(*e*) See the Copyhold Act, 1887, s. 1, as to enfranchisement.

any means vested in the sd F. upon the trusts of the sd indre, TO THE USE of the sd F. & K., their hrs & assns, accdg to the custom of the sd manor, subjt to the tenancies affectg the same premes, but upon & for the trusts & pposes upon & for wch the sd premes ought to be held under or by virtue of the within written indre. IN WITS, &c. To use trustees

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VI.

APPOINTMENT *(endorsed) of a* NEW TRUSTEE *of a* SETTLEMENT *of* MONEY *to be produced by the* SALE *of* REAL ESTATE *conveyed by deed of even date with the Settlement in trust for sale with a* DECLARATION *of trust of the* PURCHASE-MONEY *by reference to the Settlement.* VARIATIONS, *where* PART *of the property has been sold. To accompany the last Precedent.*

PARTIES, the within named F., *survivg tree*, 1; the within named A., *the husbd*, 2; K., *new tree*, 3. *Recitals of the marre, surrender of the copyhds*, "comprd in the within recited indre of even date with the within written indre," *& admittce of F. & G., the origl trees:* [*Sale of pt of freehds*, "comprd in the sd within recited indre," *as in last Precedent:* AND WHAS the net proceeds of the sd sale (after paymt of costs), amtg to £——, were on the —— day of —— invested by the sd F. & G., in the pchase in their names of the sum of £——, &c., Annies: AND WHAS the sd last-mentd sum was in the yr —— converted into the sum of —— £2 15s. p.c. Consold. Stk]: *Recitals of* [*residue of*] *freehds & copyhlds being unsold, & deaths of C., the wife, & G., the deced tree, see last Precedent:* AND WHAS by an indre of even date with & expd to be made betn the same pties as these psnts, & endorsed on the sd within recited indre, the sd K. has been duly appted by the sd F., with the consent of the sd A., to be a tree of the same indre in the place of the sd G: AND [the unsold Recitals. Investment of sale moneys. Conversion of stock. Deed of even date appointing new trustees of conveyance.

pts of] the sd freehd & copyhd hds & premes have been duly conveyed & covted to be surrendered resply to the use of the sd F. & K., their hrs & assns, upon the trusts of the sd within recited indre: AND WHAS the sd F., with the consent of the sd A., is desirous of apptg the sd K. to be a tree of the within written indre, in the place of the sd G. [*Recital of intention to transfer stk*]. NOW THIS INDRE WITNETH, &c., *apptmt in exercise of power in within written indre or statutory power of K. to be a tree thof in the place of G.*, p. 119: *Declon of trust of*, "[the sd sum of £——, &c., Stk, when the same shl have been transferred as afsd, &] the moys to arise from the sale of [such pts of] the sd freehd & copyhd hds [as are still unsold as afsd], & the trust funds & ppty wch may from time to time represent the same resply, & the income thof, & the rents & profits of the sd hds until sold," *by reference to* "the within written indre," p. 120. IN WITS, &c.

Desire to appoint.

Appointment.

Declaration of trust.

VII.

APPOINTMENT *by supplemental deed* (*a*) *of a* NEW TRUSTEE *of a* STRICT SETTLEMENT *of* FREEHOLDS, LEASEHOLDS *and* COPYHOLDS, *the Trustees* (*as regards the* FREEHOLDS) *being only* GRANTEES *to* USES *and* DONEES *of powers*, WITHOUT *any* LEGAL ESTATE, *and the appointment being effected* WITHOUT *any* CONVEYANCE *of the Freeholds*. VARIATIONS, *where estates to preserve* CONTINGENT REMAINDERS (*b*), *or* JOINTURE *or* PORTIONS *terms are vested*

Independent deed preferable.

(*a*) In a case of this kind, as the appointment may ultimately cease to be material to the title, it may be better, in order to facilitate its removal from the title, that it should be made by independent deed (which may conveniently be supplemental), and not by endorsement.

Estates to preserve contingent remainders.

(*b*) Cases of estates to preserve contingent remainders are becoming rare, but this precedent will serve for any other case in which estates of freehold as well as terms of years are vested in the trustees. For a case where the entire legal estate is in the trustees, see Precedent V.

in the Trustees; also where there have been SALES, EXCHANGES, ENFRANCHISEMENTS, PURCHASES, *and* GRANTS *in fee at* CHIEF RENTS, *&c.; also where another estate has been settled to the uses of the principal Settlement* (*c*).

PARTIES, A., *tenant for life & donee of power of apptg new trees*, 1; F., *retirg tree*, 2; H. & K., *continuing trees*, 3; L. *new tree*, 4. Supplemental to an indre dated, &c., and made,

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(*c*) In the common case where there have been sales, &c., and repurchases, and other dealings, the following recitals may be added:—"AND WHAS divers pts of the hds comprd in [or wch have since become subjt to] the settlemt have from time to time been sold or exchanged & divers enfranchisemts have been made of copyhd tenemts held of manors thrin comprd under the respive powers thrin contd or the statutory powers in that behalf & portions of the moys arisg from such sales, exchanges, & enfranchisemts, have been invested in the pchase of hds of freehd, copyhd, or leasehd tenure wch have been conveyed or assured (in effect) as to the freehd portions thof to the uses of the settlemt, & as to the copyhd & leasehd portions thof to the trees of the settlemt upon trusts correspondg with the uses to wch the freehd hds thrin comprd were thby limd: AND WHAS divers portions of the freehd hds comprd in [or wch have since become subjt to] the settlemt have been from time to time conveyed or granted in fee for buildg or other pposes in conson of perpetual yrly rents chged upon or issuing out of the hds so conveyed or granted, or pt thof, or other hds, & wch yrly rents have been & now stand limd (in effect) to the like uses to wch the hds so conveyed or granted in fee wd have stood limd or subjt under or by virtue of the settlemt or orwise if the same had not been so conveyed or granted: AND WHAS the short parlars of the sd sevl sales, exchanges, enfranchisemts, pchases, & convces or grants in fee at rents are contd in the schdle hto: AND WHAS divers moys arisg from such sales & other transons as afsd have been from time to time invested by the sd trees in divers stks or secs, & there now

Recitals of dealings with settled estate.

&c., being a settlemt made in contemplon of the marre, &c. (hinafter called the settlemt): *Recite surrender of copyhds to use of & admittee of trees psuant to settlemt, desire of F. to retire, desire of A. to appt new tree*: NOW THIS INDRE WITNETH, &c., *apptmt by A. of L.*, "to be a tree of the settlemt in

Recitals.

Appointment.

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remains invested in the names of the sd F. H. & K., the sum of £—— stk & there is also a sum of £—— cash in their hands in respt thof: AND WHAS the sd respive sums of £—— stk & £—— cash are intd to be forthwith transferred to the sd H., K., & L."

Conveyance when there have been dealings with settled estate.

In the same case the conveyance of the freeholds will be of,—"All & singr the manors, messes, lands, rents, & hds, wch under or by virtue of the settlemt or any subseqt convce or assurce to the uses or upon the trusts thof or orwise, now stand limd to or vested in the sd F., H., & K., & their hrs durg the respive lives in the settlemt mentd, or for any other este or intt of a freehd nature: *Habendum*, for all the este or estes &c., limd to or vested in the sd F., H., & K., as afsd, nevs, upon the trusts, &c., upon & subjt to wch the same resply ought to be held by virtue of the settlemt or any such convce or assurce to the uses thof as afsd or orwise."

There will be corresponding alterations in the other clauses, and the addition of a declaration of trust of the sums of stock and cash, as at p. 132, and a schedule.

Estate settled by reference to uses of another estate.

Where an estate has become settled (whether voluntarily or in performance of a condition) to the uses of a previous settlement of another estate by reference thereto, the fact that the two are really distinct settlements is apt sometimes to get overlooked (*Taylor* v. *Miles*, 28 Beav. 411), especially where the two estates adjoin. It is important to remember this on appointing new trustees, since if in terms appointed trustees of the original settlement only, they would not thereby become trustees of the second settlement, and confusion and difficulty might arise. The variations in the above precedent for this case would be slight. The deed would be expressed to be supplemental to both settlements, and in the recitals and operative parts both the settlements would be referred to throughout by saying "the sd respive settlemts," &c. It may also be pointed out that, if in such a case there are funds under both settlements arising from sales, &c., they should be treated as distinct, as such moneys may possibly not be applicable as a common fund for the purposes of either settlement under the Settled Land Act or otherwise (see as to this *Re Byng*, [1892] 2 Ch. 219); and if the settlors are different they may be subject to different rates of succession duty.

the place of the sd F., for the sevl pposes for wch the sd F. was appted a tree by the settlemt," p. 119 : [AND THIS INDRE FURTHER WITNETH that, in psuance of the sd apptmt, the sd F., H., & K., as trees do hby grant unto the sd H., K., & L. (*a*), ALL & SINGR the manors, messes, lands, & hds by the settlemt limd or assured unto or to the use of the sd F., H., & K., & their hrs, durg the respive lives thrin mentd, or for any other este or intt of a freehd nature (*b*): To HOLD the same UNTO & TO THE USE of the sd H., K., & L., & their hrs, for all the este or estes, intt or intts of a frechd nature, by the settlemt limd to the use of or vested in the sd F., H., & K., & their hrs, nevs upon the trusts, & subjt to the powers & provons by & in the settlemt decld & contd concerng the same]: [AND THIS INDRE ALSO WITNETH that, in psuance of the sd apptmt, the sd F., H., & K., as trees do hby assn unto the sd H., K., & L., ALL & SINGR the manors, &c., by the settlemt limd or assured to the use of them, the sd F., H., & K., their exs, ads, & assns, for the respive terms of —— & —— yrs as thrin mentd : To HOLD the same UNTO the sd H., K., & L., their exs, ads, & assns, for the respive terms of yrs so limd to or vested in the sd F., H., & K., their exs, ads, & assns as afsd, nevs upon the trusts, &c., *as above*.] AND THIS INDRE ALSO WITNETH that, in psuance, &c., the sd F., H., & K., as trees do hby assn unto the sd H., K., & L., ALL & SINGR the messes, lands, & hds of leasehd tenure by the settlemt assned or assured to the sd F., H., & K., their exs, ads, & assns : To HOLD the same UNTO the sd H., K., & L., their exs, ads, & assns, for the residue of the respive terms of yrs for wch the same are resply holden, subjt to the paymt of the rents & the pformce & observce of the covts & condons reserved & contd in the respive leases under wch the same resply are holden, nevs upon the trusts, &c., *as above*.

Grant of estates to preserve contingent remainders.

Habendum to trustees.

Assignment of jointure and portions terms.

Habendum to trustees.

Assignment of leaseholds.

(*a*) See above p. 122, note.

(*b*) As to the omission of the general words and all the estate clause, see above, p. 124, note, and p. 130, note.

Covenant to surrender copyholds.

AND THIS INDRE ALSO WITNETH that, in psuance of, &c., each of them, the sd F., H., & K., **as tree**, so far only as relates to the acts of himself & his own hrs, hby covts with the sd L., his hrs & assns, that they, the sd F., H., & K., or their hrs., *covt to surrender copyhds at expse of trust este to the use of H., K., & L., & their hrs, see* p. 130, nevs upon the trusts, *&c., as above.* In wits, &c.

VIII.

APPOINTMENT *by supplemental deed of new Trustees of a* Portions Term *by the* Executor *of the* Last Surviving *Trustee under the Conveyancing Act,* 1881, *with the concurrence of the principal beneficiaries.* Vesting *declaration as to* Freeholds *and* Equitable Copyholds (*a*).

Recitals.

Parties, A., *exor of survivg tree,* 1; B., C., & D., *beneficiaries,* 2; E. & F., *new trees,* 3. Whas these psnts are supplemental to an indre, &c. (hinafter called the ppal indre), *being a deed limitg a term of* 1500 *yrs, to commce from the death of the survor of X. & Y. to M. & N. for raisg portions. Deaths of X. & Y. Death of M. Will of M. apptg A. exor. Death & probate. That sales, &c., & reinvestmts in pchase of freehds & copyhds have been made, see last Precedent, note,* p. 133: And whas the sd A. has been requested by the pties hto of the 2nd pt to appt the sd pties hto of the 3rd pt to be trees of the sd portions term in the place of the sd M. & N.: NOW THIS INDRE WITNETH that, in exercise of the power for this ppose conferred by the Conv. & Law of Ppty Act, 1881, & of every other power, &c., the sd A., with the approbon (hby testified) of the sd pties hto of the 2nd pt, doth hby nominate & appt the sd E. & F.

Request to appoint.

(*a*) See pp. 113—116

to be trees of the ppal indre in the place of the sd M. & N., for all the pposes for wch the sd M. & N. were by the same indre appted trees: AND THE SD A. DOTH HBY DECLARE that all such of the hds, of whatsr tenure (*b*), comprd in the ppal indre, & thby limd to the use of the sd M. & N. for the sd term of 1500 yrs as remain unsold, & all other lands & hds, of whatsr tenure, wch by the means hinbfe recited, or by any other means whatsr, have become or are now comprd in or subjt to the same term, & all the este & intt thrin (whether at law or in equity) wch was vested in the sd M. & N. or the survor of them, or is now vested in him the sd A. as such exor as afsd, or is subjt to the trusts of the sd term of 1500 yrs, shl forthwith vest in the sd E. & F. as jt tenants for the sd term of 1500 yrs or other the este or intt last afsd upon the trusts to wch the same are resply subjt under or by virtue of the ppal indre or any such convce or assurce to the uses or upon the trusts thof as afsd or orwise. IN WITS, &c.

Vesting declaration.

IX.

APPOINTMENT *of* NEW TRUSTEES (*the* NUMBER *being increased*) *of a* WILL *containing a general devise and bequest of Freehold, Copyhold, Leasehold, and Personal Estate in* TRUST *for* CONVEYANCE *and* ASSIGNMENT *of the Trust* PROPERTY (*c*), PART *having been converted and the* PROCEEDS

(*b*) As the entire legal estate in fee in the copyholds is in the general trustees of the settlement, and the trustees of the term of 1,500 years have only an equitable estate in them for the term, this can be vested by declaration under the Conv. Act, 1881, s. 34, not being within the exception in sub-s. 3.

As to vesting equitable estate in term.

(*c*) As to vesting the trust estate by declaration, see p. 116. Where the executorship has not been wound up, it may be desirable to add a declaration that the conveyance of the trust estate is not to be deemed an assent by the executors to the specific or residuary bequests of leaseholds or personalty in trust: see *Re Tuck*, 30 Sol. J. 320.

As to declaration avoiding executors' assent to bequests.

invested in various securities. VARIATIONS, *where the* COPYHOLDS *are not devised to but directed to be sold by the Trustees: and where the appointment is made under the* STATUTORY POWER.

PARTIES, A., *continuing tree*, 1; B., *retirg tree*, 2; H. & K., *new trees*, 3. WHAS X., late of, &c., deced, by his will dated, &c., after bequeathg certn legacies & annies, devised & bequed all his freehd [copyhd] & leasehd estes, & all the residue of his psonal este unto & to the use of the sd A. & B., their hrs, exs, ads, & assns resply, upon the trusts thinafter mentd, & he thby directed his sd trees to sell, convert, & get in the same [& also all his, the sd testor's, copyhd estes] & to invest the proceeds thof as thrin mentd: AND the sd testor thby authorised the postponemt of such sale & conversion: [AND he thby devised unto the sd A. & B. & their hrs all estes vested in him upon any trust or by way of mtge, subjt to the trusts & equity of redmon subsistg thrin resply] (*b*): [AND the sd will contd a power, &c., *recite power, if any, to appt new trees & to increase the no., vested in the survivg or continuing tree or trees, includg retirg trees, as far as material*]: AND the sd testor appted the sd A. & B. exs of his sd will: AND WHAS the sd testor died on the —— day of —— witht havg revoked or altered his sd will, wch was duly proved by the sd A. & B. in the Ppal, *or*, "—— District" Registry on the —— day of ——: [AND WHAS the sd A. & B. were on the —— day of —— duly admitted to all the copyhd hds devised by the sd will]: AND WHAS all the funl & testy expses & debts of the sd testor, & the legacies

Recital of will (*a*).

Death and probate.

Admittance to copyholds.

Executorship wound up.

As to making appointment supplemental to will.

(*a*) The appointment may, for greater brevity, be treated as supplemental to the will (to which there is of course no objection, although s. 53 of the Conv. Act, 1881, applies to deeds only, see p. 3, note), in which case it will be expressed as "intd to be read as annexed or supplemental to the will of X., late of, &c., dated, &c., & proved, &c."

(*b*) The testator is supposed to have died before 1882; see Conv. Act, 1881, s. 30; and as to copyholds, see Copyhold Act, 1887, s. 45.

bequed by his sd will have been fully pd & satisfied, & one of the annies thby bequed has ceased by the death of the annuitant, & all arrears thof have been pd, & the sum of £——, &c., Annies was appropriated & invested in the names of the sd A. & B. to answer such of the annies thby bequed as were payable: AND WHAS such last mentd sum was in the yr 18— sold & the proceeds invested in, &c.: AND WHAS pt of the sd testor's residuary psonal este has been got in & realised by the sd A. & B., & the clear proceeds thof (after such paymts & approprions as afsd) have been invested by them in the pchase in their names of divers stks, funds, shares, & secs, psuant to the trusts of the sd will, & some of such investmts have since been transposed, & the parlars of the psnt investmt thof (inclusive of the investmt appropriated to provide for the sd annies) are specified in the first schdle hto: AND WHAS the real & leasehd estes of the sd testor have not yet been sold psuant to the trusts of his sd will, & consist of, &c., *short parlars referrg, if convenient, to a second schdle:* AND WHAS certn portions of the sd testor's psonal este are also still outstandg or unrealised, & consist of, &c., *short parlars referrg, if convenient, to a third schdle;* AND WHAS the sd B. is desirous of being dischged from the trusts of the sd will, & the sd A. & B. are desirous of apptg the sd H. & K. to be trees thof in the place of the sd B.: AND WHAS the sevl stks, funds, shares, & secs specified in the sd first schdle hto are intd to be forthwith transferred into the jt names of or so as to be under the jt legal control of the sd A., H., & K.: NOW THIS INDRE WITNETH, &c., *apptmt under the power in the will, if any, or in the statute, of H. & K.* "to be trees of the sd will in the place of the sd B.," p. 119 (*c*):

Present state of trust funds

Real and leasehold estate not converted.

Personal estate still outstanding.

Desire to retire and appoint.

Intention to transfer stocks.

Appointment.

(*c*) If there is no power in the will to increase the number of trustees, this can only be done, if at all, under the Conv. Act, 1881, s. 31; see above, p. 115. As to the retrospective operation of that enactment, see p. 111. If the will was before the Act and omitted the power in reliance on Lord Cranworth's Act (which did not authorize the number to be increased), it is conceived that the appointment to fill the vacancy should

As to increasing the number of trustees.

Grant of freeholds. AND THIS INDRE ALSO WITNETH that, in psuance of the sd apptmt, the sd A. & B. as trees do hby grant unto

Parcels the sd A., H., & K. (*a*), ALL THOSE the sd freehd —— hds & premes hinbfe [& in the first schdle hto] mentd, & all & singr other (if any) the freehd messes, tenemts, lands, tithes, & hds whatsr & wheresr by the sd will of the sd X. devised to the use of the sd A. & B. & their hrs, or wch are now by any means vested in the sd A. & B. upon the trusts of

Habendum to trustees. the sd will (*b*): TO HOLD the same UNTO & TO THE USE of the sd A., H., & K., their hrs & assns, subjt to the leases & tenancies affectg the sd respive premes, upon the trusts

Covenant to surrender copyholds. hinafter expd: [*Covt by A. & B., with H. & K., to surrender the copyhds to the use of A., H., & K., & their hrs, to be inserted if the copyhds are devised by the will to the trees, see Precedent V.:*] AND THIS INDRE ALSO WITNETH

Assignment of leaseholds. that, in psuance of the sd apptmt, the sd A. & B. as trees

Parcels, do hby assn unto the sd A., H., & K., ALL THOSE the sd leasehd —— & premes hinbfe [& in the first schdle hto] mentd, & all other (if any) the leasehd hds by the sd will bequed to the sd A. & B., their exs, ads, & assns, or wch are now by any means vested in them the sd A. & B., upon

and personalty. the trusts of the sd will, AND ALSO all [the pperty mentd in the sd schdle hto & all other (if any)] the psonal este & effects by the sd will bequed to them in trust as afsd, & now remaing unsold & undisposed of, or wch are now by any means vested in the sd A. & B. upon the trusts of the sd will, TOGR WITH the full benefit of all powers & remedies for gettg in, recoverg, & givg effectual rects for the sd

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be made under the combined operation of that Act and the will (if containing a provision enabling the number to be increased), or the Conv. Act, 1881, in which case the retiring trustee need not join in the appointment; but to obviate doubt it is better that he should do so, or if for any reason he is unable or unwilling this should be recited (see p. 113); and (if the appointment is made under the Conv. Act, 1881, alone) he would, if able and willing, have to join in it; see p. 113.

(*a*) See above, p. 122, note.

(*b*) As to the omission of the general words and all the estate clause see above, p, 124, note, and p. 130, note.

psonal este & premes & every pt thof (*c*): To HOLD the same UNTO the sd A., H., & K., their exs, ads, & assns, as to the sd leasehd premes, for all the residue now to come of the term or terms, estes, or intts for wch the same resply are held, subjt to the underleases or tenancies affectg the same, & as to the sd other psonal este & effects absolutely, but as to all the sd premes upon the trusts hinafter expd. *Declon of trust of the stks, &c., & the ppty conveyed & assned & covted to be surrendered*, p. 120: [AND THIS INDRE ALSO WITNETH that the sd A. & B. as trees do hby grant unto the sd A., H., & K., ALL & SINGR the freehd hds wch were vested in the sd testor upon any trust or by way of mtge, & wch were by his sd will devised to the use of the sd A. & B. & their hrs: To HOLD the same UNTO & TO THE USE of the sd A., H., & K., & their hrs, subjt to the equities affectg the same resply] (*d*). IN WITS, &c.

Habendum to trustees.

Declaration of trust.

Grant of trust and mortgage estates.

The first Schdle above refd to.

[*Investmts.*]

The second Schdle above refd to.

[*Real & leasehd estes.*]

A freehd farm & lands known as ——, situate, &c., & comprisg —— acres or thrabts.

(*c*) The power of attorney to use the names of the assignors is omitted as being unnecessary. See p. 124, note.

(*d*) The transfer of the trust and mortgage estates (if any), which were vested in the testator was never necessary, and was always of doubtful propriety, except as to any mortgages which have been appropriated as part of the trust estate; see 4 Dav. Prec. 650. In the case of a testator dying since the 31st Dec., 1881, such estates would vest in the executors under the Conv. Act, 1881, s. 30 (except as to copyholds to which he had been admitted; see the Copyhold Act, 1887, s. 45), and ought certainly not to be transferred on an appointment of new trustees, except in the case before mentioned; and in that case it would seem that the transfer might be made by a separate deed not disclosing the trust, in the same mode as in *Re Harman*, 24 Ch. D. 720, where the mortgage was vested in the testator as a trustee only, and not beneficially.

As to transferring trust and mortgage estates.

A freehd plot of land situate at, &c., adjoing, &c., containg, &c., or thrabts.

A copyhd messe or tenemt, situate, &c., held of the manor of ——.

A leasehd messe & land at, &c., held under a lease, dated, &c., for a term of —— yrs, from, &c., at the yrly rent of, &c.

The third Schdle above refd to.

[*Outstandg psonal este.*]

A revy share or intt in a legacy of £—— under the will of X., proved at —— on the —— day of, &c.

A sum of £—— due from, &c., on the secy of a bond, dated, &c.

X.

APPOINTMENT *by* Surviving Trustee *of a* Will *of separate sets of* Trustees *for distinct parts of the* Property *held under distinct* Trusts (*a*), *in place of* Himself *and* Deceased Trustee. Vesting Declaration.

Parties. *Parties*, A., *retirg tree*, 1; B. & C., *new trees of pt of trust ppty*, 2; D. & E., *new trees of remr of trust ppty*, 3;

Recitals. *Recite will givg real & psonal ppty to A. & X., upon trust to convert, &c.*, p. 138, *& to hold investmts after death of testor's wife as to one moiety upon trusts for testor's son Y., his wife & chn & next of kin, & as to the other moiety upon trust for testor's daur Z., her husbd & chn & next of kin. Power (if any) of apptmt of new trees in survivg or continuing (includg retirg) trees, to be set out fully as far as material. Death of testor & probate of will*, p. 138. *Conversion, &c., & investmt of residuary*

(*a*) See p. 115.

este, p. 139. *Death of wife. Death of X.* And whas the investmts specified in the first schdle hto representg one eql moiety of the net proceeds of the sale & conversion of the residuary este of the sd testor have been appropriated by the sd A. to be held upon the trusts decld by the sd will for the benefit of the testor's son Y., & his wife & chn & next of kin, & the investmts specified in the 2nd schdle hto representg the other eql moiety of the same net proceeds, have been appropriated by the sd A. to be held upon the trusts decld by the sd will for the benefit of the testor's daur Z., her husbd & chn & next of kin, *Desire of A. to retire, & to appt B. & C.* "new trees of the sd first mentd moiety of the sd trust premes," *& D. & E. of the second moiety*, p. 122 (*b*), *& their consent.* NOW THIS INDRE WITNETH that in psuance of the sd desire the sd A. in exercise of the powers in this behalf conferred upon him by the sd will or the "Conv. Acts, 1881 & 1882," & of every or any other power, &c., hby appts the sd B. & C. to be trees of the sd will in the place of the sd X., deced, & of him the sd A. so far as regards the moiety of the residuary este of the sd testor wch was bequed by his sd will upon trust for the sd Y., his wife & chn & next of kin as thrin mentd, And hby declares that all the investmts & ppty specified in the sd 1st schdle hto shl immedly upon the exon of these psnts vest in the said B. & C. upon the trusts last afsd or such of them as are now subsistg. *Similar apptmt & declons as to the other moiety.* In wits, &c.

Appropriation of distinct portions of trust estate.

Witnesseth

Appointment of trustees of part of trust property.

Vesting declaration (*c*).

[*Schdles of investmts.*]

(*b*) In the case of real estate, the appointment may be of, "the sd B. & C. to be trees, &c., so far only as regards the —— este & hereds situate, &c., devised by the sd will, but not further, & the sd D. & E. to be trees, &c., so far only as regards the —— este & hereds situate, &c., devised by the sd will but not further," &c.

Variations for real estate.

(*c*) Or the trust estate may be vested by assignment in the old way. If it consists of Stock Exchange investments or mortgages, it will be transferred separately in the usual way, and a declaration of trust added see the above Precedents and notes.

XI.

APPOINTMENT *of* NEW TRUSTEES *of a* WILL *and Codicils, containing various specific and other devises and bequests to the trustees, one trustee having* DIED, *another having* REFUSED *to act, and the third* RETIRING, *but only* TWO *being appointed in place of the* THREE. VARIATIONS *where the appointment is made under the* STATUTE (*a*). *The* BENEFICIARIES *who are sui juris* JOIN *to testify their* APPROVAL, *and* RELEASE *the* RETIRING *trustee* (*b*).

Recitals.

PARTIES, A., *retirg tree & donee of power*, 1; X., Y., *&* Z., *beneficiaries*, 2; H. *&* K., *new trees*, 3. *Recite will* (*c*), *noticg all the devises & bequests to the trees A., D., & F., & the apptmt of them to be exors, & settg forth the power* (*if any*) *to appt new trees in the place of trees dying, whether in the lifetime of the testor or aftwds, or refusg to act, or retirg, vested in the survivg, continuing, or retirg* (*d*) *tree or trees, with power to increase or reduce the no.: Codls: Death of testor:*

Death of one trustee in testator's lifetime.

AND WHAS the sd F., one of the trees appted by the sd will, died in the lifetime of the sd testor, namely on the —— day of ——: AND WHAS the sd will & codls were duly proved by the sd A. alone in the —— Registry on the —— day of ——:

Probate.

Another trustee having renounced.

AND WHAS the sd D. renounced probate of the sd will & codls, & never acted in the admon of the este of the sd testor or the exon of the trusts of the sd will & codls, & declined to accept such trusts [& by deed poll under his hand & seal, dated, &c., disclaimed the sd trusts, & all the

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(*a*) See the Conv. Act, 1881, s. 31, (1), (3), (6), and above, p. 111.

(*b*) Trustees sometimes stipulate for a release on their retirement, but a complete release cannot, of course, usually be given. See for other forms Vol. II., RELEASES.

(*c*) Unless the appointment is supplemental, see p. 138, note.

Mode of appointment where no continuing trustee.

(*d*) Unless the power were expressly exercisable by a retiring trustee, or the case is within the Conv. Act, 1881, two deeds would in this case be necessary, namely, 1. An appointment by A. (as a continuing trustee) of a new trustee in the place of the disclaiming trustee; and 2. An appointment by the newly appointed trustee of a new trustee in place of A. retiring. For an appointment by a disclaiming trustee, see *post*, p. 150.

estes & ppty, real & psonal, by the sd will & codls devised & bequed as afsd]. [*Recitals shewg that exorship has been wound up, see last Precedent, & the intts of the beneficiaries X., Y., & Z.:*] AND WHAS the sd A. is desirous of being dischged from the treeship of the sd will & codls, & it is desired to appt the sd H. & K. to be trees of the sd will & codls in the place of the sd A. & D., but it is not intd at psnt to supply the place of the sd F. as a tree thof (*e*): AND WHAS the sd A. has agrd at the request of the sd pties hto of the 2nd pt to make the sd apptmt, upon their joining herein to testify their approval, & to give him such rele as is hinafter contd, wch they have agrd to do: NOW THIS INDRE WITNETH, &c., *apptmt under the power in the will, or in the Conv. Act*, 1881, *by A.*, "with the approval (hby testified) of the sd pties hto of the 2nd pt," *of H. & K. to be trees in the place of A. & D.*, p. 119: AND THIS INDRE ALSO WITNETH that in psuance of the sd apptmt the sd A., as tree, doth hby grant unto the sd H. & K., *convce of freehds to use of H. & K.—assnmt by A.*, "as tree," *to H. & K. of leasehds & psonalty—& declon of trust of the ppty conveyed & assned, as in last Precedent, addg a reference to the codls:* AND THIS INDRE FURTHER WITNETH that in psuance of the sd agrmt & in conson of the premes, the sd pties hto of the 2nd pt do resply hby to the extent of their intts & ability rele the sd A., his hrs, exs, & ads, from all claims, demands, actions, & pcdgs in respt of the sd trust este & premes under the sd will & codls of the sd testor & the trusts thof or in respt of any sale, investmt, or transposon of investmt, paymt, or other dealg, or anythg done or omitted by the sd A. in respt thof or orwise howsoever in relon thto. IN WITS, &c.

Desire to retire and appoint.

Agreement as to beneficiaries joining.

Appointment.

Conveyance of freeholds.

Release to retiring trustee.

(*e*) The proper course where the number of trustees is reduced, whether under an express power, or under the statutory power, is considered to be to leave one vacancy expressly unfilled, in order that it may be filled up hereafter, if desired; since otherwise an additional trustee could not be afterwards appointed so as to restore the original number (except by the circuity of two deeds), until a fresh vacancy occurs; see the Conv. Act, 1881, s. 31 (2), and above, p. 115.

Form or appointment where number is reduced.

XII.

APPOINTMENT *by* SUPPLEMENTAL DEED *of* THREE NEW TRUSTEES *of a* SETTLEMENT *of real and personal estate, under the provisions of the* CONVEYANCING ACT, 1881, *where one trustee is* DEAD, *another a* LUNATIC, *and the third has gone to* RESIDE ABROAD. DECLARATION *by the* APPOINTOR VESTING *the* TRUST ESTATE *in the new trustees. A short form* (*a*).

Parties, A., *donee of power*, 1; B., C., *&* D., *new trees*, 2. WHAS these psnts are intd to be read as supplemental to an indre dated, &c., & expd, &c., being the settlemt exted on the marre of the sd A. with the sd K., his late wife, the power of apptg new trees whof is vested in the sd A., & supplemental to an indre of, &c., being an apptmt of the sd L. to be a tree of the sd settlemt in the place of M., one of the trees thof who was dead, jtly with the sd N. & O., & supplemental to an indre of, &c., whby the sevl freehd & leasehd hds, the short parlars of wch are contd in the first & second pts of the schdle hto resply, were assured to the sd L., N., & O., as to such of the sd hds as are of freehd tenure in fee simple, & as to such of the sd hds as are of leasehd tenure for the respive residues then unexpired of the terms grted by the sevl indres of lease thrin recited, & the sevl copyhd hds & premes, the short parlars whof are contd in the third pt of the sd schdle hto, were covted to be surrendered to the sd L., N., & O. & their hrs, on the

Supplemental to the settlement,

and to former appointment of new trustee,

and deed transferring trust estate.

(*a*) As to making the deed supplemental to the settlement and the prior supplemental deeds, see above, p. 77, note; there is a practical convenience in indicating shortly the nature of the prior deeds as is here done, and the precedent would otherwise be scarcely intelligible; if preferred, the particulars of the prior deeds may be given in a schedule. As to the power to appoint new trustees and to vest the trust estate by the declaration of the appointor, see ss. 31 and 34 of the Conv. Act, 1881, and above, pp. 111 *et seq.*

As to making deed supplemental.

trusts of the sd settlemt: AND WHAS the sd copyhd hds & premes, were on the —— day of —— duly surrendered in psuance of the sd covt, & the sd L., N., & O. were duly admitted thto: AND WHAS the sd L. died in the yr ——: AND WHAS the sd N. is of unsound mind & has been so found by inquison dated, &c., [*or*, but has not been so found by inquison]: AND WHAS the sd O. in the month of —— went to reside abroad at ——, & has ever since remained & still remains abroad: *Desire to appt B., C., & D., trees in the place of L., N., & O.:* AND WHAS the ppty now subjt to the trusts of the sd settlemt consists of the sd hds assured by the above-mentd indre of, &c., & the sd surrender & admittee, & wch are resply specified in the first, second, & third pts of the sd schdle hto, & the sevl bond debts, policies of assurce, revy intts, & annies or yrly sums wch are resply specified in the fourth pt of the sd schdle, & the furniture & effects wch are specified in the fifth pt of the sd schdle, & the sevl mtge debts, stks, funds, shares, & secs wch are resply specified in the sixth pt of the sd schdle: AND WHAS it is intd that the sd copyhd hds & premes, & the sd mtge debts & the secs for the same, & the sd stks, funds, shares, & secs wch are resply mentd or specified in the third & sixth pts of the sd schdle hto, shl, as soon as may be, be assured or transferred to or vested in the sd B., C., & D., upon the trusts of the sd settlemt (*b*): NOW THIS INDRE WITNETH that the sd A., in exercise of the power for this ppose vested in him by the sd settlemt & the Conv. & Law of Ppty Act, 1881, & of every other

Surrender of copyholds.

Death of one trustee lunacy of another,

and absence of the third.

Present state of trust property.

Copyholds, mortgages, and stocks to be transferred separately.

Appointment.

(*b*) If the copyholds have not been actually surrendered to the trustees, so that the legal estate is outstanding, the equitable interest (that is to say, the right to call for a conveyance of the legal estate) may be included in the vesting declaration, though it would in fact pass to the new trustees by virtue of their appointment and without any transfer; see above, p. 116. As to copyholds, see the Copyhold Act, 1887, s. 1. The lunacy of one of the trustees would in this case necessitate an application to the Court under the Lunacy Act, 1890, 53 Vict. c. 5 (see ss. 135—143), in order to effect the transfer of those portions of the trust estate which cannot be vested by the appointor's declaration; see as to this, p. 114.

As to vesting the property in the new trustees.

power, &c., doth hby appt, &c., *apptmt of B., C., & D. trees in place of L., N., & O.:* AND THIS INDRE ALSO WITNETH that in psuance of the sd apptmt & in exercise of the power in this behalf conferred by the above-mentd statute, he, the sd A., doth hby declare that, FIRST, the sevl freehd & leasehd hds & premes mentd or descd in the first & second pts of the schdle hto & all other, if any, the freehd & leasehd hds & premes assured by the sd indre of, &c., or wch are now by any means vested in the sd N. & O., as such survivg trees as afsd (exclusive of any lands or hds vested in them by way of mtge for securg any moy subjt to the trusts of the sd settlemt), & all the este & intt of the sd N. & O., as such survivg trees as afsd, in the same respive premes, AND SECONDLY, the sevl bond debts & intt, policy moys, revy intts, annies, or yrly sums, & premes specified in the fourth pt of the sd schdle hto, & the right to recover & rece the same respive premes, & all the este & intt of the sd N. & O. as such survivg trees as afsd thrin, AND THIRDLY, all the furniture & effects specified in the fifth pt of the sd schdle hto, & all the este & intt of the sd N. & O. as such survivg trees as afsd thrin, shl resply vest in the sd B., C., & D., their hrs, exs, ads, & assns resply, as jt tenants, upon & for the trusts & pposes upon & for wch the same resply ought to be held by virtue of the sd indre of settlemt or orwise. IN WITS, &c. (*a*).

Vesting declaration.

As to freeholds and leaseholds,

choses in action,

and furniture.

The Schdle above refd to.

Hereditaments.

PTS 1, 2, & 3.—*Freehds & leasehds.*

Bond debt.

PT 4.—A bond, dated, &c., under the hand & seal of, &c., whby the sd —— became bound to —— in the penal sum of £—— conditioned for the paymt of £—— & the ppal moy & intt now due & henceforth to become due for the same & the full benefit & advantage thof.

(*a*) Notice of the deed should be given, as regards the choses in action transferred by it, to the several debtors, insurance offices and trustees.

The sevl policies of assurce on the lives of —— & —— resply, parlars whof are as follows: Policies of assurance.

Name of Office.	Persons in whose Names Policy effected.	Amount of Policy.	Date.	Number.	Premium.

All the share, este & intt of the sd —— under the above recited indre of settlemt [will], expectant & to take effect in posson on the death of —— [or the default or failure of issue of the sd —— by his wife —— wch shl last happen] of & in, &c. Reversionary interest.

An anny or yrly sum of £—— arisg, &c., *as the case may be*, & payable, &c. Annuity.

Pt 5.—The furniture & houshd effects in the house of —— or such pts thof as are subjt to the trusts of the will of the above-mentd testor. Furniture.

Pt 6.—A sum of £—— with intt secd on mtge, dated, &c., of an este situate, &c. Mortgage debts, &c.

£—— £2 15*s.* p.c. Consold. Stk.

£—— £4 p.c. Prefce Stk of the —— Rly Co.

—— shares of £—— each of the —— Co. Limd.

XIII.

DISCLAIMER *and* APPOINTMENT *of* NEW TRUSTEES *by the* DISCLAIMING TRUSTEE *under a* WILL, *the* HEIR *and* PERSONAL REPRESENTATIVE *of the* TESTATOR *joining for the purpose of vesting the trust estate in the* NEW TRUSTEES. VARIATION *where it is* VESTED *by the* DECLARATION *of the* APPOINTOR *under the Conveyancing Act*, 1881. (*a*).

Parties, A., *disclaimg tree*, 1; B., *hr-at-law of testor*, 2; C., *legal psonal repre of testor*, 3; D. & E., *new trees*, 4.

Recitals.

Recite will of X., statg the gifts of real & psonal este to A. & K. "upon certn trusts thrin mentd," [*the power, if any, to appt new trees, exercisable by refusg or decling trees, if willg, to be recited fully*], *& the apptmt of exor; Death of testor, & grt of probate or lres of admon with will annexed to C.* [*& hrship of B.*]. AND WHAS by a deed poll dated, &c., under his hand & seal, the sd K. has renounced & disclaimed all the real & psonal este & premes by the sd will devised & bequed to him jtly with the sd A., & all

Disclaimer by one trustee.

Power of disclaiming trustee to appoint new trustees.

(*a*) See *Exp. Hadley*, 5 De G. & S. 67. Under the ordinary express power, which is given to surviving or continuing trustees, or under the repealed enactment, 23 & 24 Vict. c. 145, s. 27, a disclaiming trustee could not appoint new trustees, see *Travis* v. *Illingworth*, 2 Dr. & Sm. 344; but a disclaiming trustee is a refusing trustee within the Conv. Act, 1881, s. 31 (1), (6) (see above, p. 112), and can exercise the powers. As to the effect of the repeal of the former enactment on instruments prior to 1882, see p. 111. Both the disclaiming trustees might, of course, concur in the appointment, but it is here assumed that the one first disclaiming objects to do so. The disclaiming trustee cannot convey the trust property, which would be repugnant to his disclaimer; it must be conveyed to the new trustees by the heir or legal personal representative of the testator, as the case may require, unless it can be vested in them by the declaration of the appointor under the Conv. Act, 1881, s. 34 (see p. 116 *et seq.*). In the former case it may be better to make the conveyance by a separate deed, as the disclaiming trustee is not concerned with it; in the latter case it must be by the same deed (see p. 118).

trusts, powers, & authorities vested in him the sd K., whether jtly with the sd A. or orwise, & the office of tree under the sd will [*or recite death of K. in testor's lifetime, as the case may be* (*b*)]: AND WHAS the sd A. has declined to accept the devises & beqts made to him jtly with the sd K. in & by the sd will, or to act as tree thrunder, except for the ppose of exercisg the power of apptg new trees thof in the place of the sd K., & of him the sd A., wch he has agrd to do by apptg the sd D. & E. to be such trees in mner hinafter mentd: [*Existg state of trust ppty*, p. 139, *mutatis mutandis*]: NOW THIS INDRE WITNETH, &c., *disclaimer by A., see* DISCLAIMER, save & except the power of apptg new trees of the sd will wch is hinafter exercised by him, the sd A.: AND THIS INDRE ALSO WITNETH, &c., *apptmt by A. of D. & E. to be new trees in the place of K. & A.* p. 119: [AND THIS INDRE ALSO WITNETH, &c., *convce & assnmt of real & psonal trust este by testor's hr* "as tree" *& psonal repve* "as legal psonal repve of the sd X." *rcsply to D. & E.*, p. 140; *or, declon by A. vestg the trust este in D. & E., under the Conv. Act*, 1881, p. 120.] IN WITS, &c.

Refusal of other to act.

Witnesseth.

XIV.

APPOINTMENT *by* SUPPLEMENTAL DEED *of new trustee of a* WILL *in place of a trustee who is* ABROAD *where it is* DOUBTFUL *whether the* POWER *is vested in the* TENANT FOR LIFE *or the* CONTINUING TRUSTEE (*c*).

PARTIES, A., *tenant for life*, 1; B., *continuing tree*, 2; C., *new trees*, 3. WHAS these psnts are intd to be supple-

Recitals.

Deed supplemental.

(*b*) If K. survived the testator and acted, his executors or administrators, and not A., would be the proper persons to appoint the new trustees under the usual power.

(*c*) This is the case of a will before the Conv. Act, 1881, in which the Doubt as

mental to the will dated, &c., & proved, &c., of X. deced (hinafter refd to as the will) whof the sd B. & Y. are the psnt trees, & whby it was provd that the power of apptg new trees thof in the place of any tree or trees who shd die or be desirous of being dischgd or refuse or become incapable to act shd be vested in the sd A. durg his life: AND WHAS the sd Y. in the yr —— went to reside & has ever since resided at —— out of the United Kingdom: AND WHAS the sd A. & B. are desirous that the sd C. shl be appted to be a tree of the will in the place of the sd Y., but it is considered doubtful whether under the circes the power of apptg such new tree is vested in the sd A. as the pson nominated for the ppose by the will, or in the sd B. as the continuing tree thof: *Recitals as to trust ppty, &c.* NOW THIS INDRE WITNETH, that the sd A., in exercise of the power (if any) for this ppose vested in him by virtue of the will & the Conv, &c., Act, 1881, as the pson nominated in that behalf by the will, & of every, &c. AND the sd B., in exercise of the power (if any) for this ppose vested in him by virtue of the sd Act as the continuing tree of the will & of every, &c., do resply hby appt the sd C., &c., *apptmt*, AND THIS INDRE ALSO WITNETH, that in psuance, &c., & in exercise of the power for this ppose vested in the sd A. or the sd B. (as the case may be) they, the sd A. & B. do resply, &c., *vestg declon.* IN WITS, &c.

Trustee abroad.

Desire to appoint.

Appointment.

Vesting declaration.

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to donee of power.

power in Lord Cranworth's Act of 1860 was relied on, the tenant for life being nominated to exercise it. As the Act of 1860 did not apply to a trustee resident abroad (the words "incapable to act" meaning personal incapacity, see *Re Bignold*, 7 Ch. 223), it was necessary to have recourse to the Act of 1881; and as it might be doubtful whether the power in that case was in the tenant for life or the continuing trustee (as to which see *Re Walker*, 24 Ch. D. 698, above, p. 111), they are both made to join in the appointment.

XV.

DEED *executed on the* RETIREMENT *of one of three trustees of a* SETTLEMENT *without the appointment of a* NEW *trustee in his place, under the* CONVEYANCING ACT, 1881 (*a*). *A short paragraphed form by* SUPPLEMENTAL DEED *without recitals.*

PARTIES, A., *donee of power of apptg new trees*, 1; B., *retirg tree*, 2; C. & D., *continuing trees*, 3. Supplemental to an indre of settlemt dated, &c., & expd, &c. (hinafter refd to as the settlemt) WITNETH, as follows:—

1. THE sd B. hby declares that he is desirous of retirg & being dischgd from the trusts of the settlemt. Desire to be discharged.

2. THE sd A., C., & D. hby consent to the dischge of the sd B. from such treeship, & to the vestg in the sd C. & D. alone of the ppty now held upon or subjt to the trusts of the settlemt [the short parlars of wch are stated in the schdle hto] (*b*). Consent of appointor and continuing trustees.

3. THE sd A., B., C., & D. hby declare that all the —— & premes mentd in the first pt of the sd schdle hto & all other (if any) lands, hds, chattels, & ppty, whether real or psonal (includg things in action), wch are now subjt to the trusts of the settlemt (not being a legal este or intt in copyhd or customary lands or hds, & not being lands or hds vested in the sd B., C., & D., or any of them, by way of mtge for securg moy subjt to the trusts of the settlemt) shl vest in the sd C. & D. alone, their hrs, exs, ads, & assns resply (accdg to the nature of the ppty) as jt tenants for all such este & intt as the sd B., C., & D., or any of Declaration vesting trust estate (*c*).

(*a*) See ss. 32, 34; and above, p. 115; and as to supplemental deeds, see p. 77.

(*b*) It would be proper, though not essential, to insert a short statement of what the trust property consists of, referring if convenient to a schedule.

(*c*) See p. 116.

them, had thrin resply immedly bfe the exon of these psnts & upon the trusts & subjt to the provons applicable thto resply by virtue of the settlemt or orwise. [*Or*, THE sd. B., **as tree**, doth hby rele unto the sd C. & D., their hrs, exs, ads, & assns resply, accdg to the nature of the ppty, ALL & SINGR [the —— & premes mentd in the first pt of the sd schdle hto, & all other, if any,] the ppty, este, & effects whatsr, whether real or psonal, now vested in the sd B., C., & D., at law, or in equity, upon the trusts of the settlemt [other than lands or hds vested in them, the sd B., C., & D., by way of mtge for securg moy subjt to the trusts of the settlemt]: To HOLD the same UNTO & TO THE USE of the sd C. & D., their hrs, exs, ads, & assns resply, accdg to the nature of the ppty, & to the intent that the same premes resply may be vested in them alone, as jt tenants, upon the trusts of the settlemt.]

Or, Conveyance by retiring trustee by release (*a*).

Further assurance.

4. IT is hby agrd & decld that every further assurce, transfer & thing necy for vestg any of the ppty [mentd in the sd schdle hto, or any other ppty] comprd in or subjt to the trusts of the settlemt in the sd C. & D. alone, their hrs, exs, & ads resply, shl be exted & done forthwith (*b*). IN WITS, &C. (*c*).

[*Schdle.*]

As to retiring trustee conveying by release.

(*a*) As the retiring trustee must be a party to the deed, his interest in the trust property may be conveyed in the ordinary way (by release of his estate in joint tenancy to his co-trustees), as in the variation in brackets. If there are mortgages they should be excepted and transferred by separate deeds. But the release may, it is considered, extend to the legal estate in copyholds (see Scriven on Copyholds, p. 116), and in this respect the conveyance has an advantage over a vesting by declaration under the late Act; and the conveyance has the further (though unimportant) advantage that it enables a covenant against incumbrances to be implied under the Act (see above, p. 123, note), which must otherwise be expressed; but it is not the practice to insert an express covenant.

(*b*) This clause operates as a covenant by B.

(*c*) Proper notices of the deed with respect to any choses in action should be given; see the previous precedents.

XVI.

APPOINTMENT (*endorsed*) *of a* NEW TRUSTEE *in place of a retiring Trustee of a Trust Deed of* REAL *and* PERSONAL *estate, containing general* POWERS *of* SALE, LEASING, *and* MANAGEMENT, *&c., where part of the property is or may be* ABROAD, *and the property is conveyed and assigned to a* PROVISIONAL TRUSTEE *upon trust to reconvey and reassign to the continuing and new Trustees* (*d*).

Parties, A. & B., *psnt trees*, 1; C., *new tree*, 2; D., *provonal tree*, 3. WHAS the trusts of the within written indre have not yet been fully exted: AND WHAS the sd A. is desirous of retirg from the trusts of the sd indre, & he & the sd B. have determined to appt the sd C. to be a tree thof in the place of the sd A.: NOW THIS INDRE WITNETH, &c., *apptmt by A. & B. of C., to be a tree in the place of A.*, p. 119: AND THIS INDRE FURTHER WITNETH that, in psuance of the sd apptmt, & in conson of the premes, the sd A. & B. do, & each of them doth hby grt, convey, & assn unto the sd D., ALL & SINGR the ppty, este, & effects whatsr, whether real or psonal, or movable or immovable, in posson, revon, remr, or expectancy, or in action, & whether in England or abroad, wch are now under or by virtue of the within written indre or orwise howsr vested in the sd A. & B., or eir of them, for any este or intt whatsr, & whether at law or in equity, upon the trusts of the same indre, with the rights, easemts, & appurts to the sd

Recitals

Trusts unexecuted.

Desire of trustee to retire, &c.

Appointment.

Conveyance and assignment to provisional trustee.

(*d*) See the next Precedent. The machinery of two deeds is here employed (according to the old practice, prior to 22 & 23 Vict. c. 35, s. 21, as to personalty, where there was a continuing trustee), as it might be doubtful whether, as to the property abroad, the continuing trustee could convey and assign to himself. For the same reason the appointment is assumed to be made under a power in the instrument, as the statutory power would not apply, and the other recent legislation cannot be made use of

As to appointment and vesting where property abroad.

premes belonging (save & except any mtge debts so vested, & the secs for the same, wch are intd to be transferred to the sd B. & C. by septe deeds (*a*)), AND ALL the este & intt of the sd A. & B., or eir of them, in the premes, TOGR WITH full power & authority to the sd D., his hrs, exs, ads, & assns, & the trees & tree from time to time of the within written indre, to use the name or names of the sd A., his hrs, exs, or ads, & to exercise & enforce all lawful or available powers & remedies for the ppose of demandg, suing for, recoverg, receivg, & obtaing posson of & givg effectual dischges for the sd respive premes comprd in the convce or assignmt expd to be hby made & every or any pt thof, & to exte & do all such instrumts, acts, & things, whether before a notary public or other public officer or orwise, as may be necy or pper for perfectg & completg these psnts, or effectually vestg the sd respive premes hby conveyed & assned in the sd D., his hrs, exs, ads or assns, or other the trees or tree from time to time of the within written indre, & for any such ppose as afsd to appt a substitute or substitutes at pleasure, TO HOLD the sd real & psonal este & premes hby conveyed & assned resply UNTO & TO THE USE of the sd D., his hrs, exs. ads, & assns resply accdg to the nature of the ppty, UPON TRUST & to the intent that the sd D., his hrs, exs, or ads resply, shl forthwith by anor indre already prepared & engrossed & endorsed on the within written indre, & intd to bear even date with & to be exted immedly after these psnts, & expd to be made betn the sd D. of the one pt, & the sd B. & C. of the other pt, convey & assn the sd premes hby conveyed & assned unto & to the use of the sd B. & C., their hrs, exs, ads & assns resply, to be held by them upon & for the trusts & pposes applicable to the same premes resply, under or by virtue of the within written indre. *Covt by A. & B. with D. agst incumbces; see* CONVEYANCES ON SALE. IN WITS, &c. (*b*).

Power of attorney to use name of retiring trustee.

Habendum to provisional trustee.

Upon trust to reconvey and reassign.

(*a*) See above, pp. 116, 154.

(*b*) Any proper notices as to choses in action, &c., comprised in the deed should be given.

XVII.

RECONVEYANCE *and Reassignment by the* PROVISIONAL TRUSTEE *in the last Precedent (also endorsed on the Trust Deed).*

PARTIES, D., *provonal tree,* 1; B. & C., *continuing & new trees,* 2. WITNETH that in psuance & exon of the trust or diron in that behalf in the above written indre contd, the sd D. doth hby grt, convey, & assn unto the sd B. & C., ALL & SINGR the ppty, &c., *as in last Precedent,* conveyed & assned to the sd D., his hrs, exs, ads & assns, by the above written indre, with the appurts thof, AND ALL the este & intt of the sd D. in the premes, TO HOLD the sd real & psonal este & premes hby conveyed & assned resply UNTO & TO THE USE of the sd B. & C., their hrs, exs, ads, & assns, resply accdg to the nature of the ppty to be held by them, upon & for the trusts & pposes applicable to the same resply, under or by virtue of the within written indre. IN WITS, &c.

Reconveyance and reassignment.

Habendum to trustees

APPRENTICESHIP.

PRELIMINARY NOTE.

For the law as to apprenticeship see Simpson on Infants, pp. 94-100 Austin on Apprentices; and the Acts in the Index to the Statutes under "Apprentice." There are of course special forms applicable to particular cases, *e.g.*, under 46 & 47 Vict. c. 41, 2nd schedule (Merchant Shipping, Fishing Boats). The following observations may be found useful.

De Francesco v. *Barnum.*

The case of *De Francesco* v. *Barnum*, 45 Ch. D. 430, may, according to a learned writer in the Law Quarterly Review, Vol. VII., p. 3, be thus summed up: "(i) An action cannot be brought against an infant on a covenant to serve (see Croke, Car. 179). Hence (ii) The negative clauses in an apprenticeship deed cannot be enforced by injunction. (iii) Where the provisions in an apprenticeship deed are unreasonable, and cannot be enforced against the infant or the infant's parent, A., the infant's master and teacher, cannot maintain an action against X. for enticing away the infant from his employment."

As to provisions not for benefit of apprentice.

Where the deed provides for paying wages, a provision stopping the wages during a lock-out or turn-out would be invalid, *Meakin* v. *Morris*, 12 Q. B. D. 352; as also, it is presumed, would be a provision for reducing the wages in the event of the working hours being reduced under the Factory Acts or similar legislation. See further as to provisions not for the benefit of the apprentice, *Leslie* v. *Fitzpatrick*, 3 Q. B. D. 229.

Medical attendance.

As to the master's liability, in the absence of stipulation, to supply the apprentice with medical attendance, see *R.* v. *Smith*, 8 C. & P. 153.

As to an agreement by an infant not to carry on a competing business after the expiration of the term of service, see *Evans* v. *Ware*, [1892] 3 Ch. 502.

Death or bankruptcy of master.

In the absence of a provision to that effect, no part of the premium is recoverable on the master's death, *Whincup* v. *Hughes*, L. R. 6 C. P. 78; see 29 Sol. J. 315. As to the bankruptcy of the master, see the Bankruptcy Act, 1883, s. 41. If the contract of service extends to the master's executors, the deed will at his death be binding as between them and the apprentice, *Cooper* v. *Simmons*, 7 H. & N. 707.

If the whole of the premium is not paid at the time when the infant is bound apprentice, it is usual for the father or some other relative to covenant for payment of the balance. If the infant himself covenant for payment, whether under seal or not, he will be held liable on attaining full age, provided (1) the apprenticeship was a provident and proper arrangement, (2) the premium was fair and reasonable, and (3) instruction has been duly given under the deed, *Walter* v. *Everard*, [1891] 2 Q. B. 369. As the onus of proving these facts would lie on the master, it is better, if possible, to obtain the covenant of some adult. Covenant for payment of premium.

As to the effect of gross misconduct of the apprentice, *e.g.*, habitual theft, on the master's covenant to teach and maintain him, see *Learoyd* v. *Brook*, [1891] 1 Q. B. 431. Gross misconduct by apprentice.

That an apprenticeship to a corporation is good, see *Burnley, &c., Soc.* v. *Casson*, [1891] 1 Q. B. 75. Master a corporation.

As to stamps, see the Stamp Act, 1891, sched. APPRENTICESHIP, and GENERAL EXEMPTION FROM ALL STAMP DUTIES, and the Merchant Shipping Act, 1854, s. 143. Stamps.

As to articles of clerkship to a solicitor see 6 & 7 Vict. c. 73, ss. 4, 5, 8-11, 13; 23 & 24 Vict. c. 127, s. 7; 40 & 41 Vict. c. 25, s. 23, sched. 2. As to the period of service see 6 & 7 Vict. c. 73, ss. 3, 6; 23 & 24 Vict. c. 127, ss. 2-6, 15, 32; 35 & 36 Vict. c. 81; 40 & 41 Vict. c. 25, ss. 12-14. As to registration see 50 & 51 Vict. c. 65, ss. 7-9. As to the enrolment of the articles *nunc pro tunc*, see *Exp. Darville*, L. R. 2 C. P. 244; *Exp. Banyard*, L. R., 10 C. P. 638; *Re Sayer*, L. R., 10 C. P. 569. As to the stamp, see Stamp Act, 1891, sched. ARTICLES OF CLERKSHIP. As to articles of clerkship to solicitor. Stamps.

It is now settled that the practice of assigning articles of clerkship is erroneous. The proper course is by mutual agreement to cancel the original articles and to enter into fresh articles, which require a stamp of 10*s.*; see *Exp. Adams*, 4 Ch. D. 39; 21 Sol. J. 357, 585. Assigning articles of clerkship.

As to the bankruptcy of the solicitor see Bankruptcy Act, 1883, s. 41. As to the right, in the absence of express contract, to a return of the premium on the death of the solicitor, see *Ferns* v. *Carr*, 28 Ch. D. 409. Bankruptcy or death of solicitor.

A covenant by an articled clerk of a London solicitor not to transact business with his clients extends to country solicitors for whom he is agent. *Reid* v. *Burrows*, [1892] 2 Ch. 413.

I.

INDENTURE *of* APPRENTICESHIP.

THIS INDRE, made, &c., BETN A., of, &c., *master*, of the first pt; B., *apprentice*, son of C., of, &c., of the second pt; & the sd C., of the third pt, WITNETH, that in conson of the sum of £—— now pd by the sd C. to the sd A., Parties. Covenant by master

the rect whof he doth hby acknowe & in conson also of the service of the sd B. to be done or pformed to or for the sd A., & of the covts & agrmts hinafter entd into by the sd C. & B., he, the sd A., at the reqt of the sd C., & with the consent (hby testified) of the sd B., doth hby covt & agree with the sd C., & also with the sd B. in mner follg, that is to say, that he, the sd A., will take & rece the sd B. as his apprentice from the day of the date of these psnts for the term of —— yrs, & also will durg the sd term, to the best of his power, knowledge & ability, instruct the sd B. in the trade or business of ——, & in all things incident or relatg thto, in such mner as he, the sd A., doth now or shl hrafter durg the sd term use or practise the same [And will durg the sd term find & provide the sd B. with good & sufft board & lodging in the house of the sd A., *or* "And will pay to the sd B. durg the sd term or until the sooner determinon of the sd apprenticeship, the respive sums follg, in lieu of providg him with board & lodging (that is to say), the sum of £—— for the first yr of the sd term, the sum of £—— for the second yr thof, &c., payable [qtrly] on the —— day of ——, &c., with a proportionate pt thof up to the day on wch the sd apprenticeship shl terminate "]: And further that the sd A. shl not require the sd B. to attend to the business or affairs of the sd A., for a longer period than —— hours in each day, unless the sd B. shl unavoidably be longer engaged by an extreme & unusual pressure of business: And in conson of the covts & agrmts hinbfe contd on the pt of the sd A., the sd C. doth hby place & bind the sd B., & the sd B. with the consent of the sd C. doth hby place & bind himself with & to the sd A. durg the term afsd, durg all wch time the sd B. shl faithfully, honestly, & diligently serve him, the sd A., & obey & pform all his lful & reasble commands & requiremts, & shl not do any damage or injury to the sd A. or knowingly suffer the same to be done witht acquaintg him thwith, but shl in all things conduct & acquit himself as an honest & faithful apprentice ought to do: And for the consons afsd, the sd

to receive apprentice,

instruct,

to provide board and lodging

or, pay allowance in lieu thereof.

Business hours.

Apprentice bound.

Covenant by father

C. doth hby covt & agree with the sd A., that the sd B. shl faithfully, honestly, & diligently serve the sd A. as his apprentice durg the term afsd: AND ALSO that he, the sd C., his exs or ads, will at his or their own expse, find & provide the sd B. with good & sufft [board, lodging,] clothg, washg, pocket-moy, medicine & medical attendce (*a*), & all other necessaries, [except board & lodging as afsd] durg the sd term [& will also pay the expses of the funl of the sd B. in the case of his death durg the sd term] (*b*): [PROVD ALWAYS & it is hby agrd that in case the sd B. shl die within —— calr months from the day of the date hrof, [or in case the health of the sd B. shl within that time fail, so as to incapacitate him from follg the trade or business of ——, & such failure of health shl be certified by two duly qualified medical practitioners (*c*)], the sd A. shl repay to the sd C. the sum of £——, pt of the sd premium or sum of £—— so pd to the sd A. as afsd, & in case such death [or failure of health certified as afsd] shl happen after such —— calr months, but within —— yrs from the date hrof, then the sd A shl repay the sum of £——, pt of the sd premium]: [PROVD ALSO, & it is hby further agrd, that in case the sd A. shl die bfe the expiron of the sd apprenticeship, then the exs or ads of

that son shall serve,

to provide necessaries.

Proviso in case of son's death, &c

Proviso in case of master's death (*d*).

(*a*) As to medical attendance, see *ante*, p. 158.

(*b*) The following provision for a change in the locality of the business seems free from the objection in *Eaton* v. *Western*, 9 Q. B. D. 636 (overruling *Royce* v. *Charlton*, 8 Q. B. D. 1).

"Provd always that in case at any time & so long as the sd A. shl require the sd B. to serve his apprenticeship at any place more than —— miles distant from —— afsd (wch he shl be at liberty to do provd the distce does not exceed —— miles thfrom) then the sd A. shl find pper and sufft board & lodging for the said B. in the house of him the sd A. or elsewhere, & the sd C. his exs or ads, shl pay to the sd A. the sum of £—— per week towards the expses thof."

Provision for removal of business.

As to the case of the employers being a firm which becomes split into two, see *Eaton* v. *Western*, *ubi supra*.

(*c*) See *Derby* v. *Humber*, L. R. 2 C. P. 247.

(*d*) See *ante*, p. 158

him, the sd A., shl as soon as may be after his dece find & provide for the sd B. anor pper & suitable master follg the trade or business of ——, & at their own cost assn over & bind the sd B. to such new master for such residue as shl be then unexpired of the term of his sd apprenticeship upon the same terms or upon terms equally advantageous to the sd B. as are contd in these psnts, & in default thof shl pay to the sd C. the sum of £—— for every yr & a proportionate sum for any fraction of a yr of the sd term of —— yrs wch shl at the dece of the sd A. be unexpired]: [PROVD ALSO, &

Power for son to leave service after —— years.

it is hby further agrd, that the sd A. shl permit the sd B., if he shl require the same in writg, to leave the service of him, the sd A., at the expiron of the first —— yrs, or at any time thrafter, & to employ the remr of the sd term for his own use & benefit witht any interference or claim on the pt of the sd A. in or for any gains or earngs thrafter made by the sd B. in the afsd trade or business or orwise]: [PROVD

Dismissal on misconduct (*e*).

ALSO, & it is hby further agrd, that in case the sd B. shl at any time durg the sd term be wilfully disobedient to the lful & reasble commands of the sd A., or shl orwise grossly misconduct himself, it shl be lful for the sd A. to dischge the sd B. from his service, provd that in such case he shl repay the sd C. the sum of £—— for every yr & a proportionate sum for any fraction of a yr of the sd term of —— yrs wch shl be then unexpired]: [AND it is hby agrd that upon the expiron of the sd apprenticeship & the dischge by the sd B. & C. of all their respive obligons to the sd A. hrunder this psnt indre shl be delivered by the sd A. to the sd B.] IN WITS, &c.

(*e*) See *Westwick* v. *Theodor*, L. R. 10 Q. B. 224.

II.

ARTICLES *of* CLERKSHIP *to a* SOLICITOR, *the* CLERK *being* OF AGE. VARIATION *where he is* UNDER AGE *and his* FATHER *joins* (*a*).

ARTICLES OF AGRMT made this —— day of ——, BETN [A.. of, &c., *father of the clerk*, of the first pt,] B., of, &c., *clerk*, of the one [second] pt, & C., of, &c., *solor*, of the other [third] pt: WHAS the sd B. [A.] has applied to the sd C. to accept [his son] the sd B. as an articled clerk, wch the sd C. has agrd to do in mner & on the terms hinafter appearg: NOW THESE PSNTS WITS that, in psuance of the sd agrmt the sd B. [of his own free will & with the consent of his father, the sd A.] doth hby place & bind himself clerk to the sd C., to serve him from the day of the date hrof for the term of *five* yrs: AND THE SD B. [A.] doth hby [for himself & also on behalf of his sd son B.] covt with the sd C. his exs & ads, in mner follg, that is to say, that he, the sd B., shl & will faithfully & diligently serve the sd C. as his clerk in the profession of a solor of the Supreme Court, from the day of the date hrof durg the sd term of *five* yrs, & that he, the sd B., shl not at any time cancel, injure, obliterate, destroy, spoil, waste, embezzle, spend, or make away with any of the books, paper, writgs, moys, stamps, or other ppty of the sd C. or of the firm in wch he is or may for the time being be a ptner, or of any ptner thrin, or of any of his or their clients or employers, wch shl be deposited in his or their hands, or entrusted to the care, custody, or posson of him or them or of the sd B., AND THAT in case he, the sd B., shl act contrary to the covt lastly hinbfe contd, or if the sd C., his exs or ads, or his firm for the time being, or any ptner thrin for the time being, shl sustain or suffer any loss, damage, or

Parties.

Recital.

Clerk articled.

Covenant for service.

Not to injure property.

Make good any loss.

(*a*) As to articles of clerkship, see *ante*, p. 159. See also the form recommended by the Incorporated Law Society of Liverpool in 35 Sol. J. 805.

prejudice, by the misbehaviour, neglect, or impper conduct of the sd B., he, the sd B. [A.], his exs or ads, shl make good & reimburse such loss to the sd C., his exs or ads, or such firm or ptner as afsd, as the case may be, or refund the amt or value thof: AND FURTHER, that he, the sd B., shl & will from time to time & at all times durg the sd term of *five* yrs, keep the secrets of the sd C., & of such firm as afsd & of every ptner thrin, & of his or their business, & readily & cheerfully obey & exte his or their lful & reasble commands, & shl not desert or absent himself from the service or employmt of the sd C. at any time durg the sd term witht his consent, or that of some member of the firm of wch he may for the time being be a member, first obtained, & shl, from time to time, & at all times durg the sd term, conduct himself with all due diligce, honesty, sobriety, & temperce, & that he, the sd B., will truly & honestly serve him, the sd C., at all times durg the sd term as a faithful clerk ought to do in all things whatsr in the mner above specified: IN CONSON whof & of the sum of £—— by the sd B. [A] to the sd C. now pd (the rect whof the sd C. doth hby acknowe), he, the sd C., doth hby covt with the sd B. [A.], his exs & ads, in mner follg, that is to say, that he, the sd C., will accept the sd B. as his clerk, & also will teach & instruct, or cause to be taught & instructed, the sd B. in the practice & profession of a solor of the Supreme Ct wch he the sd C., now doth or shl at any time hrafter durg the sd term use or practise, & also will at the expiron of the sd term use his best means & endeavours at the request, costs, & chges of the sd B., to cause & procure him, the sd B., to be admitted & sworn a solor of the Supreme Ct, provd that he, the sd B., shl have well & faithfully served his sd intd clerkship, & shl have successfully passed all such examinons as articled clerks are by law or custom bound to do bfe being admitted to practise as solors. [AND FURTHER that in case he, the sd C., shl retire

Keep secrets.

Obey orders.

Not absent himself.

Covenant by solicitor

to accept clerk,

teach,

cause clerk to be admitted.

Proviso for death of solicitor (*b*).

(*b*) See *ante*, p. 159

from practice or die bfe the expiron of the sd term of *five* yrs, the sd C., his exs or ads, shl within one month after his retiremt or death pay or cause to be pd to such pson or psons as shl agree to accept the sd B. as his or their clerk for the residue of the sd term, the sums of moy follg, that is to say, in case such retiremt or death shl happen before the expiron of the first yr of the sd term, the sum of £——, & in case the same shl happen after the first yr & bfe the expiron of the second yr thof, the sum of £——, &c.] IN WITS, &c.

III.

AGREEMENT *enabling an* APPRENTICE *to transfer or determine his* APPRENTICESHIP.

ARTICLES OF AGRMT made, &c., BETN A., of, &c., *master*, of the one pt, & B., of, &c., *apprentice*, of the other pt: WHAS by an indre, &c., the sd B. bound himself apprentice to the sd A., to learn his business of ——, from the day of the date thof for the term of seven yrs: AND WHAS it has been agrd that the sd B. shl have power to require an assnmt of, or to determine the sd service & apprenticeship as hinafter mentd: NOW THESE PSNTS WITS that, in psuance of the sd agrmt it is hby agrd, & parlarly the sd A. hby covts with the sd B., that in case he the sd B., shl at any time hrafter, durg the sd term of seven yrs, be desirous of servg the remr of the sd term, or of learng the sd business of ——, with some pson other than the sd A., who shl be a resident in England, & shl give notice in writg of such his desire to the sd A., then the sd A. shl & will on the rect of such notice, at the cost of the sd B., assn & transfer unto such pson being a resident in England, as the sd B. shl, by any such notice as afsd, nominate for that ppose, all the residue wch shl be then to come of the sd

Parties.

Recital of apprenticeship.

Agreement to give power.

Covenant by master

on notice

to assign,

to determine.

term of seven yrs, & all right & title to the service of the sd B., durg such residue of the same term: And also that in case the sd B. shl at any time hrafter durg the sd term of seven yrs be desirous of determining the apprenticeship or service by the sd recited indre contracted to be served or pformed, & give notice in writg of such desire as last afsd to the sd A., then & in that case immedly after any such notice as last afsd shl have been given, the sd indre of, &c., & the apprenticeship & service thby contracted to be served & pformed, & every covt, agrmt, & thing thrin expd or contd shl cease & become void, but witht prejudice to any right of action wch may have arisen in respt of any breach thtofore committed of any of such covts or agrmts. In wits, &c.

ARBITRATION.

PRELIMINARY NOTE.

Arbitration Act, 1889.

The earlier enactments relating to arbitration have been superseded by the Arbitration Act, 1889, 52 & 53 Vict. c. 49. By this Act (which relates to England only) it is provided (s. 1) that every submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect as if made an order of Court. It is therefore now unnecessary to provide, as it was before the Act, for making the submission or award a rule of Court. As to the law before the Act with respect to the submission being revocable, see the last edition of this work, Vol. I., p. 166, note. And see as to s. 1 of the Act and the jurisdiction to enforce submissions, *Re Smith*, 25 Q. B. D. 545.

Submission irrevocable.

Provisions implied in submission.

By s. 2 (which applies to all submissions, whether made before or after the Act, *Re Williams*, [1891] 2 Q. B. 257), it is enacted that a submission, unless a contrary intention is expressed therein, shall be deemed to include the following provisions, so far as they are applicable to the reference under the submission, namely :—

a. If no other mode of reference is provided, the reference shall be to a single arbitrator.

Number of arbitrators.

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

Time for making award.

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission ; or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

d. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

Examination of parties and production of documents.

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all documents within their possession or power which may be required, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

g. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

Award final.

h. The award of the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them.

Costs.

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client. This empowers the arbitrators to settle the amount of the costs, including their own fees, so as not to be subject to taxation, *Re Stephens,* 36 Sol. J. 464; *Re Prebble,* [1892] 2 Q. B. 602.

Legal proceedings.

S. 3 provides for the case of the reference being made to an official referee. S. 4 confers upon the Court or a judge power to stay legal proceedings where there is a submission. As to the discretion of the Court under this section where a question of law is involved, see *Re Carlisle,* 44 Ch. D. 200.

Power of Court to appoint arbitrators.

S. 5 enacts that in any of the following cases—(*a*) where a submission provides that the reference shall be to a single arbitrator and all the parties do not after differences have arisen concur in the appointment of an arbitrator; (*b*) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy; (*c*) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him; (*d*) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy:—any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator: and if the appointment is not made within seven clear days after service of the notice, power is given to the Court or a judge, on the application of the party who gave the notice, to make the appointment (see *Re Eyre,* [1892] 1 Q. B. 136).

Provision for arbitration of one party acting alone.

By s. 6, where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention, (*a*) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place; or (*b*) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with

notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent. But the Court or a judge may set aside any appointment made in pursuance of this section.

S. 7 provides that the arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power (*a*) to administer oaths to or take the affirmations of the parties and witnesses appearing; (*b*) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and (*c*) to correct in an award any clerical mistake or error arising from any accidental slip or omission. Powers of arbitrators.

Ss. 4, 5, and 6 do not apply where there is an agreement to appoint three arbitrators, one by each of the parties, and the third by the two so appointed (*Re Smith*, 25 Q. B. D. 545).

"Submission" is defined (s. 27) as a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

Ss. 8—12 confer certain ancillary powers, *e.g.*, to any party to a submission to summon witnesses by subpœna; to the Court or a judge to enlarge the time for making an award, and to remit an award for reconsideration; to the Court to set aside an award or remove an arbitrator or umpire in case of misconduct.

Ss. 13—17 deal with references under order of Court; and the remainder of the Act consists of general provisions as to the working of the Act.

By s. 25 the Act is made to apply to an arbitration commenced after the Act under an agreement or order made before the commencement of the Act. As to this see per Lord Esher, M.R., in *Re Williams*, [1891] 2 Q. B. 259.

The Court has no power to set aside or remit an award made under a submission by consent of the parties (*Darlington, &c., Co.* v. *Harding*, [1891] 1 Q. B. 245).

Special provisions as to arbitration are contained in many Acts relating to companies and public bodies, which must be conformed to where they apply; see the special Acts enumerated in the index to the statutes under ARBITRATION. As to the application of the provisions of the Act of 1889 to arbitration under special Acts, see *Tabernacle, &c., Society* v. *Knight*, [1892] A. C. 298.

As to the difference between a mere appraisement by valuers and an arbitration, see *Re Dawdy*, 15 Q. B. D. 426; *Re Carus Wilson*, 18 Q. B. D. 7; *Re Hammond*, 34 Sol. J. 437; Dart, V. & P. 260.

See further on this subject Russell on Arbitration.

As to the power of executors and trustees to refer to arbitration, see the Conv. Act, 1881, s. 37.

CLAUSES *as to referring* DISPUTES *to* ARBITRATION (*a*).

For reference of future disputes to two arbitrators or an umpire. Full form.

1. AND IT IS HBY AGRD & DECLD that if at any time hrafter any dispute, diffce, or question shl arise betn the sd pties hto, or their respive [hrs] exs, ads, or assns, or any of them, touchg the constron, meang, or effect of these psnts, or any clause or thing hrin contd, or the rights or liabilities of the sd pties resply or their respive [hrs] exs, ads, or assns, or any of them, under these psnts, or orwise howsr in relon to the premes, then every such dispute, diffce, or question shl be referred to the arbitron of two indifferent psons, one to be appted by each pty to the reference, or an umpire to be appted by the arbitrors in writg [bfe enterg on the business of the reference]: AND IF either pty shl refuse or neglect to appt an arbitror within *twenty-one* days after the other pty shl have appted an arbitror, & shl have served a written notice upon the first mentd pty requirg such pty to make such apptmt, then the arbitror appted as afsd shl, at the reqt of the pty apptg him, pceed to hear & determine the mres in diffce as if he were an arbitror appted by both pties for that ppose: AND THE award or determinon wch shl be made by the sd arbitrors, arbitror, or umpire, shl be final & bindg upon the sd pties hto resply, & their respive [hrs], exs, ads, & assns, so as such arbitrors or arbitror shl make their or his award in writg within, *forty*, days

One arbitrator to proceed if second not appointed.

Award to be final.

As to forms in text.

(*a*) This and the three following forms of clauses for reference of future disputes are intended for insertion in deeds or agreements not under seal, and may be used, with the verbal alterations indicated, where there are more than two parties, and also, with little if any alteration, where a company or corporation is a party. The word "heirs" is of course only required in the case of real estate, and the word "assigns" will not always be appropriate. In the case of a contract to be performed in England the full form No. I. (which was at one time in use), is now entirely superseded by the statutory provisions (see above), and the short forms II., III., and IV., are usually sufficient and effectual; but where the deed may have to be performed or sued upon abroad, it may be proper to insert the full form or some modification of it.

next after the reference to them or him, or on or bfe any later day to wch the sd arbitrors or arbitror, by any writg signed by them or him, shl enlarge the time for makg their or his award, & so as such umpire shl make his award or determinon in writg within, *twenty*, days next after the origl or extended time appted for making the award of the sd arbitrors or abitror shl have expired, or on or bfe any later day to wch the umpire shl, by any writg signed by him, enlarge the time for makg his award: AND ALSO that no action or legal pcdgs shl be commced or prosecuted by eir [any] of the sd pties hto or his [hrs], exs, ads, or assns agst the [any] other of them, his [hrs], exs, ads, or assns, touchg any of the sd mres in diffce, unless the pty to be made deft to such action or pcdgs shl have refused or neglected to refer such mres to arbitron, psuant to the provon hinbfe contd, or unless the time limd for makg such award as afsd shl have expired witht any such award being made: AND ALSO that the respive pties to such reference, & all psons claimg through them resply (*b*), shl submit to be examined by the sd arbitrors, arbitror, or umpire upon oath or affirmon in relon to the mres in dispute, & shl produce bfe the arbitrors, arbitror, or umpire all books, deeds, papers, accts, writgs, & documts within the posson or power of the sd respive pties wch may be required or called for, & do all other things wch durg the pcdgs on the sd reference the sd arbitrors, arbitror, or umpire may require: AND THAT the witnesses on the reference shl, if the arbitrors, arbitror, or umpire shl think fit, be examined on oath or affirmon: AND THAT the costs of the reference & award shl be in the discron of the arbitrors, arbitror, or umpire, who may direct to & by whom & in what mner the same or any pt thof shl be pd, & with power to tax or settle the amt of costs to be so pd or any pt thof, & to award costs to be pd as betn solor & client.

No legal proceedings to be taken.

Parties to be examined.

Costs.

(*b*) If a company or corporation is a party, this should be extended to their directors, members, secretary, clerks and officers, as the case may be.

The same Short form (in reliance on the Arbitration Act, 1889).

II. And it is hby agrd that any & every dispute, diffce, or question wch shl at any time arise, &c., *as in Form I.*, shl be refd to the arbitron of two psons (one to be appted by each pty to the reference) or their umpire (*c*): And this shl be deemed to be a submission to arbitron within the Arbitron Act, 1889, or any statutory modificon or re-enactmt thof for the time being in force, the provons whof shl apply as far as applicable.

Reference to statutory provisions (*d*).

The same. For reference to three arbitrators.

III. And it is hby agrd that any & every dispute, diffce, or question, wch may at any time arise betn, &c., *as in Form I.*, shl be refd to the arbitron of three psons, of whom one shl be appted by each pty to the reference, & the third shl be appted in writg by the two arbitors so appted bfe commencg the business of the reference, & the decision of any two of the arbitrors shl be bindg: *Add the provon at* p. 170, *for the event of either pty failg to appt an arbitror* (*e*), *mutatis mutandis, substituty* "arbitrors" *for* "arbitrors, arbitror, or umpire;" *& reference to the statutory provons as in Form II.*

The same. For reference to a sole arbitrator (*f*).

IV. And it is hby agrd that any & every dispute, diffce, or question, wch may at any time arise betn, &c., *as in Form I.*, shl be refd to the arbitron of A., of, &c., or him failg, of some other competent pson to be named by, *some official pson, e.g., the President of the Institute of* ——, *or of the* —— *Chamber of Commerce, or the Chairman of the* —— *Coy Council* (*g*); *or to one of the official referees: add reference to statutory provons as in Form II.*

(*c*) The words "or their umpire" might be omitted in reliance on the Arbitration Act, 1889, s. 2; but it is usual and better to insert them.

(*d*) The express reference to the statute, though unnecessary, is usual.

(*e*) See *Re Smith*, 25 Q. B. D. 545, above, p. 169.

(*f*) As to a reference to a sole arbitrator to be appointed by the parties, see *Re Eyre*, [1892] 1 Q. B. 136. As to a reference to an official referee, see the Arbitration Act, 1889, s. 3.

(*g*) See *Re Wilson*, [1892] 1 Q. B. 81.

PRECEDENTS.

I.

AGREEMENT *referring existing specified* DISPUTES *between the Parties to the* ARBITRATION *of one or more persons.* VARIATION, *where all other* MATTERS *in difference are referred* (*a*).

MENDUM of AGRMT made the —— day of ——, BETN A., of &c., of the one pt, & B., of &c., of the other pt: Parties
WHAS disputes & diffces have arisen & are still subsistg betn the sd A. & B. relative to, *state the specific mres in dispute:* NOW IT IS HBY AGRD that the sd disputes & diffces [& all mres in diffce betn the sd pties wch now exist or may arise at any time bfe the last ten days immedly precedg the day wch shl be appted by the arbitror [or arbitors] hinafter mentd for the first sittg in the arbitron] shl be refd, & the same are hby refd to the arbitron & determinon of K., of, &c., [*or*, K., of, &c., an arbitror nominated by the sd A., & L., of, &c., an arbitror nominated by the sd B., or in case they shl not agree in makg an award, or in determing any mre or mres hby refd to them, then, as regards the mre or mres as to wch there shl be such disagrmt, to the umpirage of such pson as the sd arbitrors shl in writg under their hands bfe they enter on the business of the reference appt]: PROVD that the sd arbitror [arbitrors] make & publish his [their] award in writg signed by him [them] concerng the mres refd, ready to be delivered to the sd pties or eir of them, or, if they or eir of them shl be dead bfe the makg of the award, to their or his psonal repves who

Recital.

Agreement to refer.

Time for arbitrators to make award.

(*a*) Stamp if under hand only 6*d.*, if under seal 10*s*. The provisions relating to an umpire and to the time for making the award, might generally be omitted in reliance on the Arbitration Act, 1889; see *ante*, p. 167.

shl require the same (*b*), on or bfe the —— day of —— next, or on or bfe any subseqt day, not later than the —— day of —— next, to wch the sd arbitror [arbitrors] shl by any writg from time to time enlarge the time for makg the sd award: [And so as the sd umpire make & publish his award in writg signed by him concerng the mres refd to him, ready to be delivered as afsd, within —— days after the origl or extended time appted for makg the award of the sd arbitrors shl have expired, or on or bfe any subseqt day, not being more than —— days from such last-mentd time, to wch the sd umpire shl by any writg signed by him enlarge the time for makg his award]: *Add refce to statutory provons as at* p. 172, *Form II.* In wits, &c.

Time for umpire to make award.

II.

AGREEMENT *for* Reference *of Specified* Disputes *to Two* Arbitrators *or their Umpire. A Short Form without Recitals.*

Parties, A., 1; B., 2. Whas disputes & diffces have arisen & are subsistg betn the sd pties relative to, *here state the specific mres in dispute:* NOW IT IS HBY AGRD that it shl be refd to K., of, &c. (an arbitror appted by the sd A.), & L., of &c. (an arbitror appted by the sd B.), or their umpire to settle & determine all the mres in diffce betn the sd pties as afsd: *Add refce to statutory provons as at* p. 172, *Form II.* In wits, &c.

Agreement.

(*b*) As to such a provision in a case of tort, see *Bowker* v. *Evans*, 15 Q. B. D. 565.

III.

REFERENCE *of all Matters in* DISPUTE *to one* ARBITRATOR. *Short Form.*

WE, A., of, &c., & B., of, &c., do hby refer all mres in dispute betn us to the award & determinon of K., of, &c.: *Add refce to statutory provons as at* p. 172, *Form II.* IN WITS, &c.

IV.

AGREEMENT *for reference to a* SOLE *arbitrator of a* CLAIM *against a* COMPANY *in* LIQUIDATION.

AGRMT made the —— day of —— BETN A., of, &c., liquidator of the —— Co, Limd, on behalf of the sd Co of the one pt, & B., of, &c. of the other pt: WHAS the sd Co is in course of voluntary windg up, & the sd A. has been appted liquidator for the ppose of such windg up: AND WHAS the sd B. claims to be a credor of the sd Co, but such claim is disputed: AND WHAS it has been agrd that the sd claim & any other mres in diffce betn the sd pties shl be refd to arbitron in mner & subjt as hinafter mentd: NOW IT IS HBY AGRD as follows:

Parties.

Recitals.

Company in liquidation.

Claim.

Agreement to refer.

Agreement.

1. IT shl be refd to E., of, &c., to determine & award whether any & what sum is due & owg from the sd Co to the sd B., or from the sd B. to the sd Co, & to decide all other mres, if any, in diffce betn the sd pties, & also to award how & by whom the costs of & incidental to the sd reference & award (includg the costs of this agrmt) are to be borne & pd, & to fix the amt of such costs, provd the award in writg of the sd E. in the premes be made within —— calr months from the date hrof, or within such extended

Claim to be referred.

Costs.

Tim for making award.

time as by agrmt of the pties, or by order of the Chancery Divon of the High Ct of Justice, shl from time to time be allowed in that behalf, & the award to be so made by the sd E. shl be final & conclusive.

Agreement to be subject to sanction of general meeting.

2. THIS agrmt is conditional on the same being sanctioned by an extraordinary resolon of the sd Co passed psuant to the provons of the Cos Act, 1862 (*a*), at a meetg of the Co to be held within one calr month from the date hrof, wch meetg the sd A. hby undertakes to summon accdly, & in the event of this agrmt not being so sanctioned, the same shl be void. IN WITS &c.

V.

AGREEMENT *referring matters in* DISPUTE *in an* ACTION *to the* ARBITRATION *of one or more named* ARBITRATORS *or an* UMPIRE (*b*).

PARTIES, A., 1; B., 2.

Recital.

WHAS an action is now pendg in the —— Divon of the High Ct of Justice, whrin the sd A. is plt, & the sd B. deft:

Agreement to stay proceedings,

NOW IT IS HBY AGRD that all pcdgs in the sd action shl be stayed, except such pcdgs as may be necy to carry out this agrmt for reference, & that in order to ascertain, settle, & adjust all accts, claims, & demands in dispute in

and refer.

the sd action, the same shl be refd & the same are hby refd to the arbitron & determinon of K., of, &c. [K., of, &c., an arbitror nominated by the sd A., & L., of, &c., an arbitror nominated by the sd B., or in case they shl not agree in makg an award, or in determining any mre or mres hby refd

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(*a*) See the Act, s. 159. As to references to arbitration by a company not in liquidation, see the Act, ss. 72, 73.

Action pending.

(*b*) As to the proceedings and practice in case of a reference where an action is pending, see the notes on ARBITRATION in the "Annual Practice."

to them, then, as regards the mre or mres as to wch there shl be such disagrmt, to the umpirage of M., of, &c., *or* "of such pson as the sd arbitrors shl in writg under their hands bfe they enter on the business of the sd reference appt," *or*, "of such pson as the sd arbitrors shl, from time to time as soon as conveniently may be after such diffce of opinion shl arise, appt in writg"]. IN WITS, &c.

VI.

BOND *to abide by the* AWARD *of one or more named persons, as to* SPECIFIED MATTERS, *or all* MATTERS *in* DIFFERENCE *between the parties* (*c*).

Obligon of Bond from A. to B.; see BONDS.

WHAS disputes & diffces have arisen & are pendg betn the sd A. & B. concerng, *state the specific mres in dispute:* AND WHAS the sd A. & B. have agrd to refer the sd disputes & diffces [& all other mres whatsr in diffce betn them] to arbitron in mner hinafter appearg, & to exte mutual bonds in that behalf: NOW THE CONDON, &c., that if the above bounden A., his hrs, exs, & ads, shl duly obey & pform the award or decision of K., of, &c., *or*, "K., of, &c., & L., of, &c.," *or*, "K., of, &c., L., of, &c., & M., of, &c., or any two of them," concerng the afsd disputes & diffces [& all other mres whatsr now in diffce betn the sd A. & B.], so as the award of the sd arbitror, *or*, "arbitrors" be made in writg, ready to be delivered to the sd A. & B. or eir of them, or if they or eir of them shl be dead bfe the makg of the award to their respive psonal repves who shl require the same, on or bfe the —— day of —— next, &c., *as in Precedent* I.:

Recitals. Disputes. Agreement for reference. Condition to perform award.

(*c*) As to submission to arbitration by mutual bond, see Russell on Arbitration. The stamp depends on the penalty, but will not exceed 10*s*. See the Stamp Act, 1891, Sched. I. tit. BOND. Submission by mutual bond.

Umpire. [And in case the sd arbitrors shl not agree in makg an award, *or*, "in determining any of the mres afsd," then, if the sd A., his hrs, exs, & ads, shl duly obey & pform the award & decision of X., *or*, "of such pson as the sd arbitrors shl in writg under their hands bfe they enter on the business of the sd reference appt," concerng the premes, *or*, "concerng the mre or mres as to wch there shl be such disagrmt of the sd arbitrors as afsd," so as the sd umpire make & publish his award or umpirage in writg concerng the mres refd to him, ready to be delivered as afsd, within —— days, &c., *as in Precedent* I.], then, &c. (*a*).

MISCELLANEOUS CLAUSES *in* Agreements *to* Refer.

Statutory provisions to be incorporated (*b*). I. All the provons of the Arbitration Act, 1889, & of any statutory modificon or re-enactmt thof for the time being in force resptg references to arbitron, wch may be applicable to the case shl apply to this reference (except so far as the same are hby exply excluded or varied).

Evidence taken by arbitrators may be acted on by umpire. II. The sd umpire shl be at liberty to act upon all or any pt of the evidce taken bfe the sd arbitrors as reported by them to him, & to make his award thrupon [unless eir of the pties to the reference shl require any witses to be reheard or any other evidce to be retaken, or shl tender any fresh evidce, in wch case the sd umpire shl hear or examine such witses or evidce].

Power to umpire to sit with arbitrators. III. It shl be lful for the umpire to sit & hear evidce in conjunction with the arbitrors, & the award (if any) of such umpire may be based upon such evidce, although at the time when it shl be taken the arbitrors may not have differed in opinion on the mres referred to them.

(*a*) To be accompanied by a similar bond from B. to A.
(*b*) See p. 172, note (*d*).

IV. The sd arbitrors or umpire shl be at liberty to appt & employ an acctant to assist them or him, at the expse of the sd pties, who shl be liable to such acctant for his reasble remuneron, And as betn the sd pties the fees of such acctant shl be borne & pd as the sd arbitrors or umpire shl direct, & such acctant may be required to make his solemn declon, accdg to the statute in that behalf, of the truth of the acct or statemt to be made out by him. Power to employ accountant.

V. The sd arbitrors or umpire shl be at liberty to make or cause to be made maps or plans of the sd lands, houses, & premes, & to measure & survey or value the same, or cause the same to be measured & surveyed or valued, & to employ a surveyor, valuer, or other pson for such ppose at the expse of the sd pties, wch expse shl as betn the sd pties be borne & pd as the sd arbitrors or umpire shl direct. Power to cause maps &c, to be made.

VI. The sd arbitrors or umpire shl be at liberty in & by the award to direct that any bldgs or works, wch they or he may award to be erected or exted, shl be erected or exted under the supervision or diron of such surveyor as they or he shl appt in that behalf, & to determine in what mner the fees of such surveyor shl, as betn the sd pties, be borne & pd. Power to cause works to be done under supervision of surveyor (*c*).

VII. The sd arbitrors or umpire shl be at liberty to take the opinion of counsel upon any question arisg in the sd reference, & to state a case for such ppose, & the expses thof shl as betn the sd pties be borne & pd as the sd arbitrors or umpire shl direct. Power to take opinion of counsel.

VIII. The sd arbitrors or umpire may state any special case, facts, or circes, previous to makg their or his award, or in the award, or in any septe paper or writg accompanying the award, so that the opinion or judgment of the —— Division of the High Ct of Justice may be had or taken thron. Power to state case for opinion of Court (*d*).

(*c*) See *Tomlin* v. *Fordwich* (*Mayor, &c.*), 5 A. & E. 147.

(*d*) See the Arbitration Act, 1889, s. 7.

Power to direct execution of deeds.

IX. THE sd arbitrors or umpire shl have power to award & direct that the sd pties hto or any one or more of them or their respive hrs, exs, ads, or assns, shl exte & do such reles, convces, assurces, & things as the sd arbitrors or umpire shl think fit, & such reles, convces, assurces, & things shl be exted & done accdly.

Power to direct entry of judgment.

X. THE sd arbitrors or umpire shl be at liberty to direct judgmt to be entd for the plt or deft in the sd action, or to direct all further pcdgs in the sd action to be discontinued or stayed, or to direct the sd action to be dismissed with or witht costs, or to direct such pcdgs to be taken in or with respt to the sd action as to the sd arbitrors or umpire shl seem fit.

General power to direct what shall be done.

XI. THE sd arbitrors or umpire shl have full power in all respts to award & direct what shl be done by the sd pties resply in relon to the mres in diffce.

Power to make separate awards (*a*).

XII. THE sd arbitrors or umpire may from time to time make one or more septe or interim award or awards as to any of the mres in diffce, wch septe or interim award or awards shl be observed & pformed witht waitg for any other award or awards, or the final award of & concerng the mres in diffce, & notwg that such other mres in diffce shl not be determined, & may make their or his award or awards witht any limiton as to time.

Power of arbitrators to proceed *ex parte* (*b*).

XIII. THE sd arbitrors or umpire shl be at liberty, in case of the non-attendce of eir of the sd pties or of their witses after —— clear days' previous notice in writg under the hand of the sd arbitrors or umpire, given to the sd pties resply or their respive solors or agents, or left at or sent by post to their respive offices or places of business, notifying the time & place of meetg, to pceed *ex parte* with the sd reference.

One award to be made.

(*a*) The condition that only one award shall be made is implied in all cases, unless the contrary is expressed or implied in the submission: *Gould* v. *Staffordshire, &c., Co.*, 5 Ex. 214, 223.

(*b*) See *Wood* v. *Leake*, 12 Ves. 412.

XIV. In case the sd K., *one arbitror*, shl die, or neglect, or refuse, or become incapable to act as arbitror bfe an award shl have been made as to all the mres refd as afsd, then the sd A., his [hrs] exs, ads, or assns, shl forthwith nominate in writg some other pson to be arbitror in the place of the sd K., & so in like mner upon the dece, or neglect, or refusal to act, or incapacity of any arbitror from time to time succeedg to the place of the sd K.: And the sd B., his [hrs] exs, ads, or assns, shl in any of the like events nominate in writg an arbitror in the place of the sd L., or of any arbitror succeedg to his place, & every arbitror so apptd shl have the same powers & authorities as the arbitror in whose place he shl have been appted. Provision for appointment of new arbitrators (*c*).

XV. And no award or decision of the sd arbitrors or umpire shl be set aside or attempted so to be by reason or on acct of any technical or legal defect therein, or any informality, omission, delay, or error of law or fact or of pcdg in or about the same or in relon thto, or on any other ground, or for any pretce, suggestion, chge, or allegon of fraud, collusion, or confederacy. Award not to be set aside (*d*).

VII.

REVOCATION *of* Submission *to* Arbitration (*e*).

TO ALL TO WHOM, &c., A., of, &c., sends greetg. *Recite provon in articles of agrmt betn A. & the —— Co to refer disputes betn A. & the Co to B. & C., or one of them:* NOW THESE PSNTS WITS that the sd A. doth hby Revocation

(*c*) This clause is probably superfluous.

(*d*) A clause in this form (in a building contract) was upheld in *Tullis* v. *Jacson*, [1892] 3 Ch. 441.

(*e*) In cases coming within the Arbitration Act, 1889, the submission would now be irrevocable; see s. 1, above, p. 167. See another form of revocation, together with a notice thereof to the arbitrator, in *Fraser* v. *Ehrensperger*, 12 Q. B. D. 311.

revoke & make void the sd agrmt for a reference of any disputes or diffces to the award of the sd B. & C., or one or eir of them, by or in the sd articles of agrmt contd, & also all & every authorities & authority wch under or by virtue of the sd articles of agreemt wd or might have orwise been vested in the sd B. & C. or one or eir of them or any other pson or psons whomsr, to determine or decide any disputes or diffces whatsr betn him, the sd A., & the sd Co: And

Declaration that award shall not be binding.

the sd A. doth hby declare that he, the sd A., will not be a pty to or be concluded by any award wch the sd B. & C., or eir of them or any other pson or psons whosr, shl make or attempt to make of or concerng such disputes, diffces, or mres, or any of them in anywise howsr. In wits, &c.

VIII.

APPOINTMENT *of an* Arbitrator.

To Mr. ——.

I hby appt you arbitror to act on my behalf in respt of certn disputes & diffces wch have arisen betn me & —— under the provons of an indre dated, &c.; And I hby inform you that by a notice in writg, bearing even date hwith, I have called upon the sd —— to nominate & appt an arbitror to act on his behalf in respt of the bfe mentd disputes & diffces existg betn us. As wits my hand this —— day of ——.

IX.

NOTICE *to go to* ARBITRATION, *and of* APPOINTMENT *of an* ARBITRATOR (*b*).

To Mr. ——.

TAKE NOTICE that disputes & diffces havg arisen betn us concerng certn mres under the provons of an indre, &c., I desire to have the same settled by arbitron, accordg to the provon in the sd indre in that behalf contd: AND further, that I have apptd Mr. ——, of ——, to be the arbitror on my behalf; AND further, that I call upon you, within seven days from the service of this notice on you, to name an arbitror to act on your behalf in the mre of the sd disputes & diffces: AND further, that if you shl neglect to name an arbitror to act on your behalf within such seven days, then the afsd disputes & diffces betn us will, accdg to the provon in the sd indre in that behalf contd, stand refd to the sd —— alone. AS WITS, &c.

X.

NOTICE *to* CONCUR *in the appointment of a* SOLE *arbitrator* (*c*).

To Mr. ——.

IN the mre of an arbitron betn A. & B.

TAKE notice that you are hby required to concur with me the undersigned in the apptmt of a sole arbitror to act in the above mentd mre for the pposes of the submission to arbitron made by certn articles of agrmt, dated, &c., & made, &c., psuant to & in accordce with clause —— of such agrmt. AS WITS, &c.

(*b*) See the Arbitration Act, 1889, s. 6.

(*c*) See the Arbitration Act, 1889, s. 5, above, p. 168; *Re Eyre*, [1892] 1 Q. B. 136.

XI.

AGREEMENT *for reference to a* Sole Arbitrator *to settle the amount to be paid by a* School Board *for* Purchase-money, *&c., under the* Lands Clauses Consolidation Act, 1845 (*a*).

AGRMT made, &c., betn A. & B. (hinafter called the vendors), of the one pt, & The School Board for —— (hinafter called the Board), of the other pt. *Recite vendors' title subjt to leases:* And whas by virtue of the Elementary Educon Acts, 1870 & 1873, & of the public Acts incorpd thwith, the Board require to pchase & take of the vendors the sd land & premes coloured —— on the sd plan as the same are parlarly desed in the schdle hto: And whas the vendors are willg to sell the sd lands & premes to the Board, subjt to a right of preemption (*b*) in their favour shd the same land & premes, or any pt thof, at any time hrafter cease to be required by the Board, & it has been agrd that the question of the amt to be pd by the Board to the vendors in respt thof shl be refd to the sole arbitron of X., of, &c., an able practical surveyor: NOW THESE PSNTS WITS that, in psuance of the powers & provons contd in the sd Elementary Educon Acts & the Acts incorpd thwith as afsd, & of any other power enablg them resply in that behalf, & in psuance of the sd agrmt, the vendors & the Board do resply hby nominate & appt the sd X. to be

Recitals.

That and is required.

Introductory recital.

Witness

Appointment of arbitrator.

Purchase of land for school, &c.

(*a*) See, as to the purchase of land by a School Board, the Elementary Education Act, 1870, ss. 19, 20 (which incorporates the Lands Clauses Consolidation Act); and see the Elementary Education Act, 1873, s. 15. As to the purchase of land by the managers of a public elementary school, see the Elementary Education Act, 1870, s. 21.

(*b*) It is conceived that the validity of such a clause under the Lands Clauses Consolidation Act, 1845 (incorporated by s. 21 of the Elementary Education Act, 1870), is not affected by any of the provisions of the Charitable Trusts Acts, 1853 to 1869, as to sale, &c. (incorporated by s. 22). See the Act of 1855 (18 & 19 Vict., c. 124) s. 29.

the sole arbitror accdg to the provons of the sd Acts, to settle & determine by his award the amt of the pchase-moy & compenson to be pd by the Board for the pchase of the freehd free from incumbces of the sd pce of land & premes so required as afsd, subjt only to the leases hinbfe mentd, & to any derivative leases or tenancies, & for the damage (if any) to be sustained by the vendors by reason of the severg of the sd lands & premes from the other lands & premes of the vendors, or in any other mner whatsr by reason of the exercise of the powers of the sd Acts in respt of the premes. As WITS the hands of the sd pties.

Schdle.

[*Pcels.*]

XII.

APPOINTMENT *by the* TRUSTEES *and* TENANT *for* LIFE *of settled estates of an* ARBITRATOR *to assess the compensation to be paid by a* LOCAL AUTHORITY *for making a sewer under the* PUBLIC HEALTH ACT, 1875 (*c*).

BOROUGH of ——, Works for sewage pposes.

WHAS under the provons of the Public Health Act, 1875, the Mayor, Aldermen, & Burgesses of the Borough of —— in the coy of ——, being the Urban Sanitary Authority of the sd Borough, have served a notice dated, &c., upon us, the undersigned A. & B., the trees under the will, &c., of the estes settled by the sd will, of wch I the undersigned

Recitals.

Notice of proposed sewer.

(*c*) 38 & 39 Vict., c. 55. As to the powers of the Local Authority, see the Act, ss. 16, 18, 19, 21, 24, 26; as to the purchase of land, see ss. 175, 176; as to interference with water rights and mines, &c., see ss. 327, 332, 334, and the Amendment Act of 1883, 46 & 47 Vict., c. 37; as to the mode of settling compensation, see s. 308; and as to arbitration, ss. 179, 180.

C., am the psnt tenant for life in posson, that the sd Authority in the exon of the powers & authorities given to & vested in them by virtue of the Public Health Act, 1875, will immedly after the —— day of —— next enter into & upon the lands & premes parlarly descd in the schdle & plan annexed to the sd notice, all of wch are situate within the Borough of -—— afsd, for the ppose of constructg, makg, & furnishg a sewer in, through, or under the sd lands & premes, & in the mner shown on the sd plan, wch sd sewer will form pt of the works comprd in the scheme for the sewerage of the sd Borough, or a pt thof, now being carried out by the sd Urban Authority, & also for the ppose of constructg man-holes, ventilatg shafts, valves, & sluices, & all other necy works for all or any of the pposes afsd, & that the course of the sd sewer was indicated by lines drawn on the sd plan, & thron coloured ——: And whas we, the sd trees of the sd settled estes, are entled, as such trees, to compenson in respt of the permanent damage or injury to the freehd of the sd settled estes, or the owner or owners for the time being thof, wch will arise or be sustained by reason of the makg & maintaing of the sd sewer & all works & things incidental thto through, under, or upon the sd respive lands & premes, & the occupon & use of any portions of the surface of the sd lands & premes wch may be permanently taken for the ppose of the sd sewer or any of the pposes afsd, And also in respt of any temporary damage or injury to the freehd of the sd settled estes, or the owner or owners for the time being thof, wch may arise or be sustained by or through the makg or constron of the sd sewer or the exon of the works & things incidental thto, the amt of such compenson in respt as well of such permanent as of such temporary damage or injury being payable to us, the sd trees (as I, the sd C., do hby admit): And whas we are desirous of havg the amt of such compenson settled by arbitron under the provons of the Public Health Act, 1875: NOW WE, the sd trees, do accdly, in psuance of the provons of the sd Act, hby nominate & appt X., of, &c., to

Claim for compensation.

Desire for arbitration.

Appointment of arbitrator.

be an arbitror on our pt to settle & determine the amt of compenson to be pd to us the sd trees by the sd Authority in respt of such permanent & temporary damage or injury resply as afsd, the amt of compenson in respt of such permanent damage or injury to be assessed & determined, if required by us the sd trees, septely from the amt of compenson for such temporary damage or injury as afsd, & the amt of compenson, whether for permanent or temporary damage or injury, payable in respt of any specified portion of the sd lands & premes to be also, if required by us, the sd trees, assessed & determined septely from the amt payable in respt of the remr of the sd lands & premes: And I, the sd C., as tenant for life of the sd settled estes, do hby confirm the sd apptmt of the sd X., as arbitror for the pposes afsd: Provd always that this reference to arbitron & the compenson to be awarded in psuance thof shl not cover or extend to any damage or injury wch may arise to the sd settled estes, or the owner or owners for the time being thof, in respt of any entry wch may be made by the sd Authority upon any pt of the sd settled estes & premes, or any works wch may be exted by them for the ppose of makg any connectg drains or communicons from the sd sewer to any house or premes near or adjoining the same, or in respt of any such entry or works wch may be made or exted by the sd Authority, at any time after the origl constron or makg of the sd sewer or any such connectg drains or communicons as afsd, for the ppose of repairg, cleansg, alterg, closg up, discontinuing or removg the same resply or orwise in relon thto: Provd also that nothg hinbfe contd shl be construed as operatg as a licence or permission to the sd Authority to make any entry upon any of the sd lands & premes, or to exte or do any works or things wch they are not lawfully entled to make, exte or do under the powers conferred upon them by the Public Health Act, 1875. Dated, &c.

Confirmation by tenant for life.

Reference not to extend to damage by branch drains.

Nor to extend the powers of the Authority.

(Signed) A., B., & C.

XIII.

APPOINTMENT *of* UMPIRE *by* ARBITRATORS *by Endorsement on the Agreement of Reference or otherwise* (*a*).

WE, [the within named] A. & B., in psuance of the powers given to us by the within contd agrmt, *or* "by an agrmt of reference, dated, &c." *or*, "by an order made by, &c., on the —— day of ——, in an action, &c.," do hby nominate & appt X., of, &c., to be the umpire accdg to the provons of the sd agrmt, *or*, "order," of reference, provd he will accept the office, & do within —— days from the date hrof signify such acceptce in writg. As WITS, &c.

XIV.

APPOINTMENT *by* TWO ARBITRATORS *of a* THIRD ARBITRATOR *to act with them* (*b*).

WE, &c., *as in last Precedent*, do hby nominate & appt X., of, &c., to be the third arbitror to act with us in the conson & determinon of the mres refd to us accdg to the provons of the sd agrmt, *or*, "order," of reference, provd he will accept the office, & do within —— days from the date hrof signify such acceptce in writg. As WITS, &c.

(*a*) See *Re Hopper*, L. R. 2 Q. B. 367; Arbitration Act, 1889, Sched I. *b*, *ante*, p. 167.

(*b*) As to the remedy where such an appointment is not made, see Arbitration Act, 1889, s. 5.

XV.

NOTICE *by* ARBITRATORS *to* UMPIRE *of final* DISAGREEMENT (*c*).

To Mr. ——.

WE hby give you notice that we cannot & shl not be able to agree in makg an award concerng the mres refd to us by an agrmt, *or*, "order," dated, &c., but have finally disagrd about the same, & that you are at liberty to proceed as umpire to consider & award upon the mres refd. Dated, &c.

XVI.

ENLARGEMENT *of* TIME *for making* AWARD *by* ARBITRATION *or* UMPIRE (*d*).

I, [the within-named] A., in psuance, &c., *as in Precedent* XIII., do hby enlarge the time for makg my award concerng the mres refd to me until the —— day of ——. As WITS, &c.

XVII.

ENLARGEMENT *of* TIME *by the Parties.*

WE, [the within-named] A. & B., do hby give & allow Time to X., the arbitror, *or*, "umpire," appted by the agrmt of enlarged. reference within contd, *or*, "by an agrmt," *or*, "order," &c.,

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(*c*) See Arbitration Act, 1889, Sched. I. *d.*, *ante*, p. 167.

(*d*) As to the power of the Court to enlarge the time, see Arbitration Act, 1889, s. 9; p. 169.

Agreement to hold good.

as in Precedent XIII., further time for makg his award, namely, until the —— day of ——: AND WE FURTHER DECLARE & agree that all the provons of the sd agrmt, *or*, "order," of reference shl continue in full force & effect, & be construed & read in the same mner as if the day hby given & allowed for makg the award of the sd arbitror, *or*, "umpire," had been given & allowed by the sd agrmt, *or*, "order." AS WITS, &c.

RECITALS IN AWARDS.

That disputes have arisen.

I. WHAS divers disputes & diffces have arisen betn, &c., concerng, &c., *or*, "under an agrmt, &c."

Action and order of reference.

II. WHAS an action has been instituted by the sd A. agst the sd B., touching the premes & the same is now pendg, & by an order made in the sd action on, &c., it was ordered, &c.

Appointment of arbitrator.

III. WHAS the sd A. by an instrumt in writing dated, &c., under his hand, appted [me the sd] B. to be the arbitror on his behalf in respt of the mres afsd.

Appointment of arbitrator by a company.

IV. WHAS the sd Co by an instrumt in writing dated, &c., under the hand of A. their secretary, appted [me the sd] B. to be the arbitror on their behalf in respt of the mres afsd.

Appointment of umpire.

V. WHAS the sd arbitrors [bfe enterg into the conson of the sd mres] by an instrumt in writg dated, &c., under their hands [endorsed on the sd agrmt] appted [me the sd] X. to be the umpire in the mre of the sd arbitron psuant to the sd agrmt [order].

Substituted appointment of umpire.

VI. WHAS the sd X. having become unable to act as such umpire as afsd the sd arbitrors [bfe enterg into the conson of the sd mres] by an instrumt in writg dated, &c., under their hands, appted [me the sd] A. to be the umpire in the mre of the sd arbitron in the place of the sd X.

Enlargement of

VII. WHAS we [the sd *arbitrors*] by an instrumt in writg

under our [their] hands dated, &c., duly extended the time for makg our [their] award dated, &c. time for making award.

VIII. WHAS the sd *arbitrors* have finally disagrd & differed & have altogether failed to make their award in the sd mres, of all of which I have duly had notice, whby the sd mres so refd to the sd arbitrors as afsd have duly come bfe me as umpire for determinon. Disagreement of arbitrators and failure to make award.

IX. WHAS the sd *arbitrors* did not make any award of & concerng the premes within the time limd by the sd agrmt [order] of reference. Failure of arbitrators to make award within time limited.

X. WHAS doubts havg been entertained as to the effect of the declon required by law havg been made & subscribed by me [the sd B. on, &c., & by myself] on, &c., by reason of the same being prior to the date of the apptmt of me [the sd B. & myself] as arbitror [& umpire resply] in the sd arbitron, the sd pties on, &c., mutually agrd in writg that no objon shd be taken to the award by reason of such informality (if any). Agreement that no objection should be taken to award for informality.

CLAUSES IN AWARDS.

I. I AWARD & adjudge that the plt has sustained damages by reason of the non-pformce by the deft of the agrmt in the statemt of claim mentd to the amt of £——, *or*, "I ASSESS the damages sustained by the plt in respt of the cause of action in the statemt of claim mentd at the sum of £——," wch sum I direct the deft to pay to the plt on or before the —— day of ——. Award of damages for non-performance of agreement.

II. I AWARD that the sd A. shl pay to the sd B. on demand the sum of £—— in full satisfon of all claims & demands whatsr [relative to the mres refd to me, *or*, "in the above-mentd action."] Award of sum in full of all demands.

III. I AWARD & order that the sd damages & the sd sevl sums of moy awarded & directed by me to be pd & the sevl Sums, &c., awarded to be in

full of all demands.

mres & things awarded & directed by me to be done by or with regard to the respive pties to this reference as afsd, shl resply be pd, reced, done, accepted and taken, in full satisfon & dischge & as a final end & determinon of the sevl mres in diffce betn the sd pties wch have been refd to me, *or*, "of all mres in diffce betn the sd pties up to the time of the submission to arbitron."

Award of mutual releases.

IV. AND I further award & adjudge that the sd A. & B. shl each, on the requison of the other of them [such other havg first pformed the award], & at the costs & chges of the pty requirg the same, exte & deliver unto the other of them a full & sufft rele of all [actions, causes of action, &] debts, damages, claims, & demands whatsr, from the beginng of the world, until the time of the sd submission to arbitron, *or*, "of all claims & demands in respt of the mres in diffce betn the sd pties wch have been refd to me as afsd," exceptg anything by the award provd to be done or suffered.

Award of release by one party.

V. AND I further award, &c., that upon paymt of the sum awarded by me as afsd, the sd A. shl, if required, by & at the costs of the sd B., exte & deliver to him, the sd B., a full & sufft rele, &c., *as in the last clause.*

Dismissal of action with costs.

VI. I AWARD, &c., that the plt has no title to the relief sought by his above-mentd action in the —— Divon of the High Ct of Justice, & that the sd action be dismissed with costs, to be taxed by the pper officer & pd by the plt to the deft.

Proceedings in action to be stayed.

VII. I AWARD, &c., that the sd action shl cease & be no further prosecuted, *or*, "that all pcdgs in the sd action shl cease, & that the same shl be no further prosecuted."

That plaintiff has no cause of action.

VIII. I AWARD, &c., that the plt has been fully pd all demands wch he had agst the sd deft, & has no cause of action agst him.

Apology to be made.

IX. I AWARD, &c., that the sd B. shl at his own expse make & publish in the —— newspaper a pper apology, statg, &c.

Plaintiff good cause of action on

X. I AWARD, &c., that the plt has a good cause of action agst the deft on the first & second paragraphs of the prayer

of his statemt of claim in the sd action for the sum of £——, wch sum I direct the deft to pay to the plt on demand: And I further award that the plt has no cause of action agst the deft on the third paragraph of the prayer of the sd statemt of claim. two claims, none on 3rd.

XI. I AWARD & find that the plt has sustained damages from the deft occasioned by the cause of action for wch the sd action was brought to the amt of £——, & I assess the plt's damages at the sd sum of £——, & direct the deft to pay the same to the plt on demand. Of damages generally.

XII. I AWARD, &c., that the sd B. shl, at the reqt & costs of the sd A., by a pper & effectual assurce, convey, *pcels*, with the appurts unto & to the use of the sd A. & his hrs, or as he or they may direct, such assurce to be prepared by the sd A. Convey-ance to be executed.

XIII. I AWARD, &c., that the sd B. shl forthwith deliver to the sd A. or his hrs all deeds & writgs in the custody or power of the sd B. relatg to the sd freehd premes. Delivery up of deeds.

XIV. I AWARD, &c., that the sd A. has no claim or demand agst the sd B. in respt of any of the mres in diffce betn them. That one party has no claim against the other.

XV. I AWARD, &c., that there are no mres in diffce betn the pties other than those in the sd action, *or*, "And as to the mres in diffce betn the sd pties other than those in the sd action, I award, &c., that the deft do pay to the plt the sum of £—— in full satisfon & dischge of all claims & demands by the plt agst the deft in respt of the same." As to other matters in difference.

XVI. I AWARD, &c., that the sd A. do pay to the sd B. the costs of the sd action, to be taxed by the pper officer. Payment of costs of action.

XVII. I AWARD, &c., that judgmt be forthwith entd in the sd action for the plt [deft], with the costs of the sd action, & of the reference & of this my award, to be taxed by the pper officer of the sd Court. Judgment to be entered for plaintiff, or defendant.

XVIII. I AWARD, &c., that each pty bear his own costs of the action. Each party to pay his own costs of action.

XIX. I AWARD, &c., that the costs of both pties of the sd action when taxed shl be added togr, & that one moiety thof Costs of action to

be borne equally.

shl be pd & borne by the plt & the other moiety by the deft & that if either pty shl have pd more than his just share, the excess shl be pd to him by the other pty.

Execution to issue for damages and costs.

XX. I AWARD, &c., that exon may issue in the sd action for the sd damages & costs forthwith, *or*, "at any time not sooner than the —— day of —— next."

All costs of reference and award to be paid by one party (*a*).

XXI. I AWARD, &c., that the sd A. do pay to the sd B. his costs of & incidental to the reference, & the costs of the award, & that the sd A. do bear his own costs of the same.

Each party to bear his own costs of reference and half costs of award.

XXII. I AWARD, &c., that each of the sd pties shl bear his own costs of the reference, & pay one-half of the costs of the award: AND that if eir pty shl in the first instce pay more than such half, the excess shl be pd to him by the other pty.

Half costs of reference and award to be paid by each party.

XXIII. I AWARD, &c., that one moiety of the costs of the reference & award shl be borne & pd by the sd A., & the other moiety by the sd B., & that if eir pty shl in the first instce, &c., *as in last clause*.

Taxation or assessment of costs.

XXIV. I DIRECT the costs of the plt of the sd reference & of this my award to be taxed as betn solor & client by A., of, &c., *or*, "one of the taxg-masters of the —— Divon of the High Ct of Justice," *or*, "I ASSESS the amt of the costs of the plt of the sd reference at £——, & of this my award at £——."

Awarding costs.

(*a*) As to awarding costs, see *Harland* v. *Mayor of Newcastle*, L. R. 5 Q. B. 47; Arbitration Act, 1889, Sched. I. (*i*), above, p. 168.

PRECEDENTS OF AWARDS.

I.

AWARD *by* ARBITRATORS *or* UMPIRE *under an Agreement or order of* REFERENCE *settling a Balance of* ACCOUNTS (*b*).

TO ALL TO WHOM THESE PSNTS SHL COME, A., of, &c., & B., of, &c., send greetg; *Recite that disputes have arisen: agrmt of reference: or, action & order of reference:* [*failure of arbitrors to make award & apptmt of umpire*] *enlargemt of time for makg award, or as the case may be; see above,* RECITALS: NOW WE, the sd, *arbitrors,* [I, the sd, *umpire*], havg taken upon ourselves [myself] the burthen of the sd reference [umpirage], & havg heard, examined, & considered the allegons of the sd pties, & the witses, documts, & evidce of both the sd pties concerng the premes, do hby make & publish our award [my award & umpirage] in writg of & concerng the premes in mner follg, that is to say: WE [I] FIND & award that the balce due from the sd N. to the sd M. upon the settlemt of the accts betn them wch have been refd to us [me] as afsd is £——, wch we [I] award & direct to be pd by the sd N. to the sd M. on demand: AND, &c., *award as to dismissal or discontinuance & costs of action (if any), & costs of reference & award, & mutual releases; see above clauses.*

Recitals.

Award.

Balance due.

Signed & published in the presence of }

(*b*) As to the stamp on an award, see the Stamp Act, 1891, Sched. I. tit., AWARD.

Stamp on award.

II.

AWARD *by* ARBITRATORS *under* LANDS CLAUSES CONSOLIDATION ACTS. VARIOUS RECITALS. PROVISIONS *as to* COMPENSATION *for* REMOVAL *of and* DAMAGE *to* MACHINERY.

Recitals.

TO ALL, &c., WE, A., of, &c., & B., of, &c., send greetg: WHAS by 2 sevl instrumts in writg dated resply, &c., under the hand of D., secretary to the —— Rly Co,

Notice to treat.

addressed to E., of, &c., notice was in psuance of the, *special Act*, & the Acts incorpd thwith given by the sd Rly Co, to the sd E., that they the sd Co required to pchase & take for the pposes of the rlys & the works connected thwith authorised by the first-mentd Act, the lands & hds resply specified & descd in the respive schdles thto & coloured —— on the respive plans accompanying the sd notices, the sd premes comprd in the first of the sd notices being descd in the schdle thto as, &c.; *the same as to ppty schdled to 2nd notice:* AND that the sd Co were willg to treat for the pchase of the sd respive lands & hds so required as afsd, & of the intt of the sd E. thrin, & as to the compenson to be made to him for the damage that might be sustained by him by reason of the exon of the rlys & works authorised by the

Notice by vendor of his interest in the lands.

first above-mentd Act: AND WHAS the sd E. by an instrumt in writg dated, &c., under his hand, gave notice to the sd Rly Co that he was entled to the sd lands & hds comprd in the sd first notice for an este, &c.: *Description of E.'s intt in the premes comprd in the two notices: recite apptmt of arbitror by E. & by Rly Co: apptmt of umpire by arbitrors: extension of time for makg award: apptmt of substituted umpire: failure of arbitrors to agree; see above*, RECITALS:

Agreement as to trade fixtures (*a*)

AND WHAS in the course of the pcdgs bfe us it was agrd that

(*a*) As to trade fixtures, see *Gibson* v. *Hammersmith & City Rail. Co.*, 2 Dr. & S. 603.

the sd E. shd retain for his own use & remove from the hds comprd in the sd first notice the engine, boiler, machy, & fixtures & fittgs in the nature of trade machy, wch were affixed to the pts of the same hds occupied by him, & that the sd Co shd pay to the sd E. the sum of £—— for the expses incurred by him in connon with such removal & for any damage to the sd engine, &c., wch might be occasioned through the removal thof: NOW THESE PSNTS WITS that we the sd A. & B. havg taken upon ourselves the chge of the sd reference & havg previously to enterg upon the mres refd to us as afsd made & subscribed the declons hrunto annexed, & nominated & appted in writg C., of, &c., to be the umpire to decide upon any of the sd mres on wch we shd differ, & havg duly heard, examined, & considered the allegons, witses, & evidce of both the sd pties concerng the premes, do togr at the same time & in the presce of each other (*b*) make this our award in writg of & concerng the premes in mner follg, that is to say: WE AWARD assess & determine that the follg sums are the amts to be pd by the sd Rly Co to the sd E. for & in respt of the pchase of & in compenson for the value of his intt in the respive lands & hds comprd in the sd respive notices to treat, & for all damage sustained by him by reason of the exon of the rlys & works authorised by the sd first above-mentd Act, that is to say, the sum of £—— (in wch is included the sd sum of £——, payable by the sd Rly Co under the agrmt lastly hinbfe recited), for the value of the intt of the sd E. in the lands & hds comprd in the first of the sd notices to treat dated, &c., & the sum of £—— for the value of his intt in the lands & hds comprd in the second of the sd notices to treat, &c. IN WITS, &c.

and machinery.

Testatum.

Award.

(*b*) See *Stalworth* v. *Inns*, 2 D. & L. 428 *Eads* v. *Williams*, 24 L. J. Ch. 531.

III.

AWARD *by* UMPIRE *in respect of* PROPERTY *injuriously affected but not taken by a* RAILWAY COMPANY (*a*).

Witnesseth.

Finding.

Award.

Further finding.

Further award.

TO ALL, &c., I, A., of, &c., send greetg. *Recitals, see above:* NOW THESE PSNTS WITS that I, the sd A., &c., *see Precedent I.*, p. 195, that is to say: I do hby find that by reason of the obstron of the main public highway leadg in a —— diron from —— Bridge, & known as —— Street, *or as the case may be*, upon wch the sd premes of the sd B. abut by, &c., *describe specifically the works causg the prejudice*, access to & from the sd premes of the sd B., from & to, &c., is rendered less direct & convenient than formerly, & the lettg value of the sd premes of the sd B. diminished in consequce thof: AND upon the assumption that compenson is payable I award, assess, settle & determine that the sum of £—— is the amt to be pd in respt thof by the sd Rly Co to the sd B. as owner in fee simple of the sd premes: AND I further find that by reason of the obstron thof as afsd —— Street so far as it lies betn the sd rly &, &c., has ceased to be a main thoroughfare, & in conseqce thof the lettg value of the sd premes of the sd B. has been diminished: AND upon the assumption that compenson is payable, I award, &c., that the sum of £—— is the amt to be pd by the sd Rly Co to the sd B. as owner in fee simple of the sd premes in respt of the diminon in the value thof lastly hinbfe mentd. IN WITS, &c.

Arbitrator's jurisdiction.

Lands injuriously affected, but not taken.

(*a*) In such a case the arbitrator can only determine the amount, and not the question whether the claimant is entitled, which latter is one of law for the Court. As to the law with regard to lands injuriously affected but not taken by a railway company, see *Caledonian Railway Co.* v. *Walker's Trustees*, 7 App. Cas. 259; *Howard* v. *Met. Board of Works*, Times Rep. 11 June, 1888.

IV.

AWARD *by* Umpire *on a* Building Contract.

TO ALL, &c., I, A., of, &c., send greetg: Whas by a contract in writg, dated, &c., & expd to be made betn B., of, &c., & C., of, &c., for the eron by the sd C. for the sd B. of a dwg-house at, &c., the sd C. was to exte the works descd in the specificon thto annexed, & in the plans & drawgs thrin refd to, & provon was made with respt to addons to & omissions from the sd intd works, & it was provd that any disputes with respt to what shd be deemed addonal or omitted work & the value thof shd be refd to the arbitron of the architect of the works, & anor architect to be nominated by the sd C.; & in case of the sd arbitrors not agreeing, then to the decision of an umpire who shd be an architect, & chosen by the sd arbitror bfe enterg upon the conson of the mres in dispute: And whas disputes have arisen betn the sd B. & C. as to what shd be deemed addonal & omitted work within the meang of the sd contract, & such disputes have been refd to the arbitron of D., of, &c. (the architect of the sd works), & E., of, &c. (an architect nominated by the sd C.), *Apptmt of umpire, disagrmt of arbitrors & failure to make award & other clauses, see above*, Recitals: NOW, &c., *see Precedent I.*, p. 195, that is to say, I find & award that the work described in the 1st column of the 1st schdle hto is addonal work within the meang of the sd contract: And I award & assess the value of the sd addonal work at the respive sums set opposite thto in the 2nd column of the sd 1st schdle: And I further find & award that the work described in the 1st column of the 2nd schdle hto is omitted work within the meang of the sd contract: And I award & assess the value of the sd omitted work at the respive sums set opposite thto in the 2nd column of the sd 2nd schdle. In wits, &c.

Recitals. Building contract.

Provision as to arbitration.

Disputes have arisen and been referred.

Finding and award.

[*Schdles.*]

ATTORNEY, POWERS OF (*a*).

CLAUSES (*b*).

Appointment by one person of an attorney or attorneys.

1. I, A., of, &c., do hby appt B., of, &c., my atty [B., of, &c., C., of, &c., & D., of, &c., jtly & every two & every one of them sevlly my attys & atty] in my name or on my behalf, to, &c.

Enactments in Conv. Acts, 1881 and 1882.

(*a*) The Conveyancing Acts, 1881 and 1882, contain some useful provisions relative to powers of attorney.

Married women.

By the Act of 1881, s. 40, a married woman, whether an infant or not, is enabled to appoint an attorney to execute a deed or do any other act which she herself might execute or do. This would not of course extend to the acknowledgment of a deed, which is necessarily her personal act. At common law a married woman could not give a power of attorney except, perhaps, with the consent of her husband; see *Cooper's Case*, 2 Leon. 200; ——— v. *Hopkins*, Cro. Car. 165, and note, 2 Buls. 13, overruling some earlier cases; see also the remark of Erle, C. J. in *White* v. *Greenish*, 11 C. B. N. S. 230. And a power given by an unmarried woman was in general revoked by her marriage; but it would seem that by the effect of the above enactment, coupled with the Married Women's Property Act, 1882, removing the disabilities of married women as to property and contracts, marriage would not now operate as a revocation; the provisions of the Conv. Act, 1882, ss. 8 and 9 (referred to below) implying that marriage might still so operate, are not inconsistent with this, as that Act was passed before the M. W. P. Act.

Execution of deeds by attorney.

By the Act of 1881, s. 46, an attorney is authorised to execute any assurance or instrument in his own name instead of in the name of the principal; see as to the two modes of execution, *infra*, DEEDS.

Protection against revocation.

The same Act, s. 47, provides that no person shall be liable for making or doing any payment or act in pursuance of a power of attorney in good faith after the principal has, unknown to him, died or become

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(*b*) All these clauses are adapted to the case of a power of attorney expressed in the first person, which is the more usual form where there are no recitals.

II. We, A., B., & C., of, &c., [carrying on business in ptnp togr as ——, under the style or firm of ——] do & each & every of us doth hby appt D., of, &c., the atty [D., of, &c., E., of, &c., & F., of, &c., jtly & every two & every one of them sevlly the attys & atty] of us & of each & every of us [& our sd firm of ——] in the names or name & on behalf of us & each & every of us [& our sd firm], &c. The same by several. Variation for a firm.

III. To rece from K., of, &c., the sum of £——, [being the price agrd to be pd by him to me for the pchase of, &c.,] and all intt due or to become due in respt thof, & to give an effectual rect & dischge for the same. To receive a sum of money.

IV. To demand, sue for, enforce paymt of, & rece & give effectual rects & dischges for all moys, secs for moy, debts, legacies, goods, chattels, & psonal este, of or to wch I am now To receive debts and personal estate generally.

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lunatic or of unsound mind, or bankrupt, or revoked the power, an enactment which is much more comprehensive than, and in fact appears entirely to supersede 22 & 23 Vict., c. 35, s. 26. This would not, of course, unless the power had been made irrevocable under s. 8 or 9 of the Conv. Act, 1882 (see below), validate a deed executed by the attorney after the death of the principal or any other event by which the power would be revoked. It is therefore desirable on a sale (except in the case of an execution under an irrevocable power) to deposit or retain the purchase-money until it is known that the power has not been revoked by the death of the principal or otherwise before the date of execution of the conveyance.

Power made irrevocable.

By the Conv. Act, 1882, s. 8, a power of attorney given *for value* may be made irrevocable in favour of a *purchaser* (which includes a mortgagee or lessee, or other person dealing for value) so as not to be revoked or affected by the death [marriage in case of a female, see above], lunacy, or bankruptcy of the donor of the power, or anything done by the donor without the concurrence of the donee; and by s. 9, a power of attorney, *whether given for value or not*, may be made irrevocable in like manner for a *fixed time* not exceeding one year, in favour of a *purchaser* (including a mortgagee, &c.). In both cases the power must be *expressed* to be irrevocable. It is not, however, clear how such a power is to operate or be acted on as against third parties.

Deposit in Central Office.

By the Act of 1881, s. 48, a power of attorney, its execution being properly verified, may be deposited in the Central Office of the Supreme Court; and office copies are made evidence; a specially useful enactment where the power relates to real estate.

Stamps.

As to the stamp on a power of attorney, see the Stamp Act, 1891, Sched. I., tit., Letter or Power of Attorney.

or may hrafter become possed or entld, or wch are or may become due, owing, payable, or transferable to me from any pson or psons or corporon.

To give receipts.

v. To rece & give effectual rects & dischges for all & any moys wch shl come to the hands of the sd [attys or] atty by virtue of the powers hrin contd, wch rects, whether given in my name or in the [names or] name of the sd [attys or] atty, shl exonerate the pson or psons or corporon paying such moys from seeing to the applicon thof, or being responsible for the loss or misapplicon thof.

To deposit, employ, or invest moneys.

vi. To deposit any moys reced by the sd [attys or] atty under or by virtue of these psnts with any banker, broker, or other pson in my name or in the [names or] name of my sd [attys or] atty, And to withdraw such moys or any other moys wch are now deposited on my behalf with any banker, broker, or other pson, & to employ or apply all or any such moys in or about my sd business or any of the pposes afsd or orwise as may be thought fit, or from time to time to invest the same or any pt thof at discron in my name or in the [names or] name of the sd [attys or] atty or of any other pson or psons in trust for me in or upon, *specified investmts, or,* "any such stks, funds, shares, or secs as may be thought pper," & to rece & give good dischges for all divds, intt, & income arisg from any such investmts, & to vary, sell, assn, transfer, & dispose of the same or any pt thof.

To acquire lands, &c.

vii. In my name & on my behalf, from time to time to pchase, take on lease or orwise acquire & hold all such houses, offices, bldgs, lands, hds, chattels, & effects in —— afsd as shl be thought necy or expedient for or in relon to any of the pposes or objts afsd.

To sell, &c., real and personal estate (*a*).

viii. From time to time, if & when the sd [attys or] atty may think fit, to sell, exchange, surrender, give up, mtge, chge, pledge, demise, lease, or dispose of any houses,

(*a*) A more specific power would often be necessary or advisable. As to a power to sell a business, see *Hawksley* v. *Outram,* [1892] 3 Ch. 359.

offices, bldgs, lands or hds of any tenure, or any chattels or effects [in —— afsd], belonging to or held by me [includg power to sell or make grants in fee of any hds wholly or partially in conson of a perpetual rent-chge, & subjt to any covts, exceptions, reservons, & restrons wch may be thought fit, & to provide for the apportionmt of or indemnity agst rents or rent-chges affectg the ppty sold], & to procure the enfranchisemt of any of the sd hds, wch may be of copyhd or customary tenure, & to grant enfranchisemts, of any copyhd tenemts held of any manor belonging to me, & to transfer, rele, or orwise deal with any mtges, chges, or secs, whether upon real or psonal ppty [in —— afsd], to wch I may be entled, & also to exte or enforce any powers of sale or other rts, powers, or remedies incident to any such mtges, chges, or secs as afsd, or orwise to realise & obtain the benefit thof in such mner as may be thought pper, & to assure or dispose of any estes wch may be vested in me as a tree or mtgee.

To raise money on mortgage (*b*).

IX. To borrow from time to time such sums of moy & upon such terms as the sd [attys or] atty may think expedient for or in relon to any of the pposes or objts afsd, upon [my psonal secy or] the secy of any of my ppty, whether real or psonal, or orwise, & for such pposes to give, exte, & make such mtges, chges, pledges, or other secs, & with such powers & provons as may be thought pper.

To manage property.

X. To manage or superintend the managemt of all the estes & hds of whatever tenure of or to wch I am or shl become seised, possed or entled, & to cut timber or underwood, & work quarries, mines, & minls (whether now open or in workg or not), upon any of the sd estes & hds, & to erect, pull down, & repair houses or other bldgs, fences, & erons, & to drain, make roads on, or orwise improve any

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(*b*) See also the full powers of mortgaging and dealing with mortgages in Precedent IX., p. 216. A power to mortgage, especially if it is to extend to pledging the credit of the principal, should of course be specifically given, if intended; see *Coondoo* v. *Watson*, 9 App. Cas. 561. Power to mortgage.

of the premes, & to dedicate any roads when made to the public, & to insure houses & other ppty against loss or damage by fire.

To manage trust estates (*a*).

XI. And also (so far as I can lawfully give or delegate such respive powers or authorities) to sell, lease, dispose of, deal with & manage any ppty real or psonal wch may be vested in me alone or jtly with any other pson or psons as a tree, exor, or admor, & to exte & sign any deeds or instrumts & genlly to do any acts wch I could lfully have exted, signed, & done in any such capacity.

To enter into agreements with tenants, and to collect rents, with ancillary powers.

XII. To enter into agreemts for yrly, monthly, or weekly tenancies, to take effect in posson or within 3 calr months from the date thof, of all or any of my real or leasehd ppty situate in the parish of —— & coy of ——, or elsewhere, & to make allowces to & arrangemts with the tenants & occupiers for the time being of the sd ppty, & to accept surrenders of leases & tenancies, & to demand, sue for, collect & rece, & give effectual dischges for the rents & profits now due & henceforth to become due in respt of the same: And to take & use all lful pcdgs & means, by distress or action or orwise, for recoverg & receivg the sd rents, & for enforcg the pformce of any covts or agrmts wch the respive lessees or tenants may be liable to pform, & for evictg and ejectg or recoverg damages from tenants & occupiers makg default in paymt of such rents or in pformce of such covts or agrmts, & for obtaing & retaing posson of all or any of the premes occupied by any lessees or tenants makg such default.

To take and defend legal proceedings (*b*).

XIII. To commce, prosecute, or enforce, or to defend, answer, or oppose all actions & other legal pcdgs & demands

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(*a*) As to the validity of such a delegation of a trust, see 3 Dav. Prec., pt. 2, 947, referring to *Stuart* v. *Norton*, 14 Moo. P. C. C. 17.

Managing trust estates.

Bankruptcy proceedings.

(*b*) That this would include bankruptcy proceedings, see *Ex parte Frampton*, 1 De G. F. & J. 263; *Ex parte Wallace*, 54 L. J. N. S., Ch. D. 293. That under the combined effect of a clause like the above and clause XXIII., *post*, an attorney can obtain letters of administration with the will annexed on behalf of an executor absent from the country, see *Re Barker*, [1891] P. 251.

touchg any of the mres afsd, or any other mres in wch I am or may hrafter be interested or concerned, & also, if thought fit, to compromise, refer to arbitron, abandon, submit to judgmt, or become non-suited in any such action or pcdg as afsd.

To settle accounts, compromise, &c.

XIV. To adjust, settle, compromise, or submit to arbitron any accts, debts, claims, & demands, disputes & mres touchg any of the mres afsd, or any other mres wch are now subsistg or may hrafter arise betn me & any other pson or psons, or betn my sd [attys or] atty & any other pson or psons.

To compound with and make allowances to debtors.

XV. To compound & accept pt in lieu of & in satisfon for the whole of, or compromise any debt or sum of moy now or hrafter owing or payable to me, or any other claim or demand wch I have or may have agst any pson or psons, or to grant an extension of time for the paymt or satisfon thof, upon such terms as may be deemed pper, eir with or witht takg secy for the same, or orwise to act with respt thto as may be deemed expedient.

To concur with joint owners.

XVI. To concur in doing any of the acts & things hinbfe mentd in conjunction with any other pson or psons interested in the premes.

To vote at meetings.

XVII. To vote at the meetgs of any Co or Cos, & orwise to act as my proxy or repve in respt of any shares now held, or wch may hrafter be acquired by me thrin, & for that ppose to sign & exte any proxies or other instrumts in my name & on my behalf.

To employ agents.

XVIII. To appt & employ any agents, overseers, receivers, or other psons at such remuneron by way of salary, commission, or orwise, as the sd [attys or] atty may think pper, & the same from time to time to dismiss & dischge, & any others to appt or employ in their stead.

To execute a specified deed (*c*).

XIX. In my name & as my act & deed to sign, seal, & deliver a certain indre already prepared & engrossed, or intd

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Confirmation by principal.

(*c*) It may sometimes be useful, *e.g.*, where a misrecital has been discovered in the power of attorney (as to the effect of which see *Hersey* v. *Fox*, Litt. Rep. 143), to obtain the principal's confirmation by endorsement

shortly to be engrossed, bearg or intd to bear date on or about the ——- day of ——, and expd or intd to be made betn, *pties*, & being or intd to be, *insert short description of intd deed as*, "a convce of freehd & leasehd hds, situate at, &c., & known as, &c., to K., by way of mtge for securg the paymt of £—— & intt."

To execute deeds, &c., generally,

XX. To exte, sign, enter into, acknowe, perfect, & do all such [contracts, convces, leases, mtges, transfers, assnmts, surrenders, relcs, assurces,] deeds, agrmts, instrumts, acts, & things as shl be requisite, or may be deemed pper for or in relon to all or any of the pposes or mres afsd.

To transfer land or other property abroad.

XXI. To sign, seal, exte, acknowe, & deliver in the sd, *foreign country or colony*, accdg to the laws for the time being in force there, such deed or deeds, instrumt or instrumts & notarial act or acts as may be deemed requisite or expedient for conveying & transferrg, or orwise effectually assurg to K., of, &c., or as he shl direct, *short description of ppty*, & also by the same or any other deed or deeds, notarial act or acts, instrumt or instrumts, to enter into such covts or agrmts as are usual accdg to the laws afsd for a vendor to enter into, or may orwise be reasbly required: And also to do & exte such further acts and things as may be deemed expedient for recordg, registerg, or orwise completg & givg validity to such deed or deeds, notarial act or acts, or instrumt or instrumts accdg to the laws afsd.

To draw bills, &c.

XXII. In my name & on my behalf to draw, accept, endorse, negotiate, retire, pay or satisfy any bills of exchange, promissory notes, cheques, drafts, orders for paymt or delivery of moy, secs, goods, or effects, bills of lading, or other negotiable or mercantile instrumts or secs, wch may be deemed necy or pper in relon to my business or affairs.

To act generally.

XXIII. And genlly to act as my [attys or] atty or [agents

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of a deed previously executed by attorney, as follows:—"I the within named A. being now in England, do hby ratify & confirm the exon of the within written indre by my atty B. for me & on my behalf. Dated, &c. In wits, &c."

or] agent at —— afsd, in relon to the premes & all other mres in wch I may be interested or concerned, & on my behalf to exte & do all instrumts, acts, and things as fully & effectually in all respts as I myself could do if psonally psnt.

To appoint substitutes.

XXIV. From time to time to appt & remove at pleasure any substitute or substitutes as atty or agent, attys or agents under [them or] him in respt of all or any of the mres afsd upon such terms & at such salaries or remuneron as [they or] he shl think fit.

Proviso keeping alive powers of attorney given to other persons for other purposes.

XXV. Provd always that this psnt power of atty shl not extend to revoke or make void or affect any former or other power or powers of atty by me at any time htofore given or delegated to any other pson or psons whomsr for any distinct or other ppose or pposes, but such other power or powers shl remain & be of the same force & effect as if these psnts had not been exted.

Substitution of another attorney in case of death, &c. (a).

XXVI. And in case of the death of the sd *atty*, or of his inability (whether permanent or temporary) or unwillingness through absence, illness, or orwise, to act as my atty in relon to the mres afsd or any of them, then I hby appt, *substitute*, of, &c., to act as my atty in the stead of the sd *atty*, after his death or durg such inability or unwillingness, & in the latter case either permanently or from time to time durg the subsistce of any such inability or unwillingness (as the case may be), unless & until these psnts shl be revoked or orwise determined, in like mner as if the name of the sd, *substitute*, had been inserted in these psnts instead of the name of the sd, *atty*.

Ratification clause.

XXVII. And I hby for myself, my hrs, exs, & ads, ratify & confirm, & agree to ratify & confirm whatsr my sd [attys or] atty [or any substitute or substitutes actg under [them or] him] shl do or purport to do by virtue of these psnts, *if the atty is to act in a distant country, add*, "includg in such confirmon, whatsr shl be done betn the time of my

(a) This clause is intended for a case in which only one attorney is appointed. In the case of a joint and several power to two or more, it would not, of course, usually be required.

death or the revocon by any other means of this power of atty & the time of such death or revocon becomg known to my sd [attys or] atty or [their or] his substitute or substitutes."

To register power abroad.

XXVIII. And I hby authorise & empower the sd [attys or] atty to acknowe in my name, & as my act & deed, this power of atty, & to register & record the same in the pper office in the sd colony, & to procure to be done any & every other act & thing whatsr, wch may be in anywise requisite or pper for authenticatg & givg full effect to this power of atty, accdg to the laws & usages of the sd colony.

Power to be irrevocable(*a*).

XXIX. And I hby declare that this power of atty shl remain in force & be irrevocable for —— calr months from the date hrof.

PRECEDENTS.

I.

TO Execute Conveyance *to* Purchaser, *and receive Purchase-money* (*b*).

KNOW ALL MEN by these psnts, that I, A., of, &c., *apptmt of atty*, p. 200 : *to rece the pchase-moy, & give rects for the same*, p. 201 : *to exte the convce*, p. 205 : *ratificon*,

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(*a*) See the Conv. Act, 1882, ss. 8, 9, above, p. 201, note.

(*b*) It is commonly said that a power of attorney must be by deed ; see 1 Dav. Prec., p. 387, note, referring to Salk. 9 ; but a deed is certainly not necessary in all cases (*e.g.*, a mere authority to receive and give a receipt for money), though it presumably is so if the transaction involves the execution of a deed, or the signing of any other document in the *name* of the principal.

p. 207: [*Power to be irrevocable, see above*]. IN WITS, &c. (*c*).

II.

TO SURRENDER COPYHOLDS *to use of Purchaser or Mortgagee* (*d*).

KNOW ALL MEN, &c., *apptmt of B. as atty*, p. 200, to appear at the next or any subsequent Ct to be holden for the manor of ——, in the coy of ——, or bfe the lord or lords, lady or ladies, or steward or deputy-steward of the sd manor, out of Ct, & then & there to surrender into the hands of the sd lord or lords, lady or ladies, eir psonally or by the hands & acceptce of the sd steward or deputy-steward by the rod, accdg to the custom of the sd manor, ALL THAT, *pcels*, with the appurts thof, TO THE USE of K., of, &c., his hrs & assns, accdg to the custom of the sd manor, [subjt to a condon for makg void the sd surrender, if I, the sd A., my hrs, exs, ads, or assns shl, on the —— day of ——, pay to the sd K., his exs, ads, or assns, the sum of £——, with intt thron in the meantime at the rate of £—— p.c. p.a.]: AND to exte & do all such further assurces & things as shl be necy or pper for procurg the sd K., his hrs or assns, to be admitted tenant or tenants of the sd premes. *Ratificon*, p. 207. IN WITS, &c.

To surrender.

Subject to redemption.

To execute further assurance.

(*c*) It is in some cases necessary (*e.g.*, to meet the requirements of the Bank of England, and many other public bodies), and in all cases desirable, that the execution of a power of attorney should be attested by two witnesses. Attestation

(*d*) That a surrender by attorney is generally valid, see *Combe's case*, 9 Rep. 75A; but a purchaser is not bound to accept a surrender by attorney; *Mitchel* v. *Neale*, 2 Ves. Sen. 679.

III.

TO *obtain* ADMITTANCE *to* COPYHOLDS (*a*).

To take admittance.

KNOW, &c., *apptmt of B. as atty*, p. 200, to appear, &c., *as in last precedent*, & to take admittce of & from the sd lord or lords, lady or ladies, steward or deputy-steward of the sd manor by the rod, accdg to the custom of the sd manor, to ALL THAT, *pcels*, TO THE USE of me, the sd A., my hrs & assns, [subjt to such rt or equity of redmon as shl be subsistg thrin by virtue of a condonal surrender of the sd —— hds & premes dated the —— day of ——]. *Ratificon*, p. 207. IN WITS, &c.

Subject to equity of redemption.

IV.

BY *a* FIRM *of* TRADERS *to raise* MONEY *on* MORTGAGE *of a Plantation in the Colonies.*

To borrow

KNOW ALL MEN, &c., that we, &c., *apptmt of attys*, p. 200, for & on behalf of us & our sd firm to borrow such sum or sums of moy, not exceedg in the whole the sum of ——, & at such rate of intt not exceedg £—— p.c. p.a., for such period & on such terms in other respts as our sd attys or atty may think fit, AND TO secure the repaymt thof with intt by a mtge of, *short description of pcels*, & the crops, produce, live & dead stk, utensils, machy, plant, effects, & ppty now or at any time hrafter in upon or belonging to the sd planton & premes or any pt or pts thof resply, & for the pposes afsd, *to give rects*, p. 202: AND FURTHER for the pposes afsd, *to exte assurce of land, crops, &c.*, p. 205, to the

Mortgage.

(*a*) As to admittance by attorney, see the Copyhold Act, 1887, s. 2, and as to enfranchisement, see s. 1.

pson or psons advancg such sum or sums of moy, or as he or they shl direct, by way of secy as afsd, with such covts as may be usual accdg to the laws in force in —— afsd for mtgors to enter into, or may be reasbly required, includg covts for repaymt of the sum or sums of moy to be advced as afsd & the intt for the same, & such powers of sale & other powers & provons in favour of the mtgee or mtgees as our sd attys or atty may deem necy or expedient, AND TO exte & do all such other instrumts, acts, & things as may be thought pper for effectuatg & perfectg any such mtge or secy as afsd, or orwise in relon to the premes. *Ratificon*, p. 207. [*Power to be irrevocable*, p. 208.] IN WITS, &c. (*b*).

Enter into covenants.

Execute deeds.

V.

TO LET *and* MANAGE *House Property.*

KNOW, &c., *appmt of atty*, p. 200: *to enter into agrmts for yrly tenancies & to collect rents with ancillary powers*, p. 204: AND ALSO for me & in my name, to settle all accts betn me & my superior landlords, or any of them, & to pay all such sums of moy as shl from time to time be due from me to them or any of them: AND TO effect insurces agst loss or damage by fire of all or any houses, bldgs, or insurable ppty on my sd este & premes, & to pay the premiums &

To settle with superior landlord.

Insure.

(*b*) It would usually be sufficient for the execution of a power to be used in the Colonies to be attested by two witnesses, one of whom should depose before a mayor having a corporate seal, or a notary public having general jurisdiction, to the execution thereof in the presence of himself and the other witness; but in the case of foreign countries, and also, it is believed, in some of the Colonies, special formalities may be desirable, if not necessary, for authenticating the power; as to which information may be obtained from the Colonial agents or a notary public, or in the case of a foreign country from the consulate. For a form of such a declaration, and the verification thereof, see DECLARATIONS. As to India, see 1 Dav. Prec. 403, note; as to the execution of powers in Germany, see 31 Sol. J. 248.

Execution of powers for use abroad.

moys payable for effectg & keepg up such insurces : *to take & defend legal pcdgs*, p. 204 : *to arrange & compromise*, p. 205 : *ratificon*, p. 207. [*Power to be irrevocable*, p. 208.] In wits, &c.

VI.

BY Legatee Abroad *to persons in* England *to receive a* Legacy and Share of Residue (*a*).

TO ALL TO WHOM these psnts shl come, A., of, &c., sends greetg. *Recite will of K., givg a legacy of* £—— *& share of residue to A., & apptg L. & M. exs ; death & probate* : NOW THESE PSNTS WITS, &c., *apptmt of B. & C., attys*, p. 200, to demand, sue for, & recover of & from the sd L. & M., as such exs as afsd, or eir of them, or other the pson or psons by whom the same may be payable, the afsd legacy of £—— so bequed to the sd A. as afsd, & also the share of the residuary este of the sd K., to wch he, the sd A., is entled as afsd : And to give effectual rects & dischges for the same resply, & to exte such reles as may be reasbly required in relon thto : And also in the name & on behalf of the sd A., if the sd attys or atty shl be required & think pper so to do, to exte any bond or covt for the repaymt of the sd legacy & share of residue, or eir of them, or of a due proportion thof resply, in case the este & effects of the sd K. shl subseqtly to the paymt thof resply, prove

To obtain payment.

Give receipts

Give indemnity.

Foreign powers

(*a*) Under a foreign power of attorney, even if in a foreign language and in foreign form, which is intended to be acted on in England, the extent of the authority, so far as transactions in England are concerned, must be determined by English law ; *Chatenay* v. *Brazilian, &c., Co.*, [1891] 1 Q. B. 79. It is sometimes necessary, and generally (if the case admits) expedient, that a power which is to be used in a country where different laws prevail (and especially if the language is different), should be according to the forms in use in that country ; as to the authentication of such a power, see note, last page.

insufft for paymt of the debts of the sd K. & the legacies bequed by his will: AND ALSO, if it shl seem expedient so to do, to take & prosecute any legal pcdgs for recoverg paymt of the sd legacy or share of residue, or for the admon of the este of the sd K., or orwise in relon to the premes: AND ALSO, if deemed necy, for & in the name of the sd A. to apply for & obtain lres of admon to the este & effects of the sd K., & to exte & do all such instrumts & acts as may be necy or pper in that behalf, or orwise in relon to the premes: AND UPON obtaing such lres of admon, for & in the name of the sd A., to do & exte all such acts & things as shl be necy or requisite in or about the gettg in & administerg the este & effects of the sd K. *To arrange & compromise*, p. 205: *To act genlly*, p. 206: *To appt substitutes*, p. 207: *Ratificon*, p. 207: [*Provo, keepg alive powers given for other pposes*, p. 207]. [*Power to be irrevocable*, p. 208.] IN WITS, &c. (*b*).

Take legal proceedings.

Take out letters of administration.

Administer.

VII.

TO *take out* ADMINISTRATION *with* WILL ANNEXED *in* INDIA (*c*).

TO ALL, &c., *Recite will of K., apptg A. & B. exs, & devisg mtge estes to them: Death & probate in England by A. & B.:* NOW, &c., *apptmt by A. & B. of C., D., & E., attys or atty*, p. 200, to apply for & obtain from the pper Ct or Cts, office or offices in India, lres of admon with the sd will annexed, limd to the movable & immovable ppty of the sd

To take out letters of administration (*d*).

(*b*) For affidavit verifying execution and verification, see DECLARATIONS, STATUTORY.

(*c*) See the Indian Succession Act, 1865, s. 242, Act XIII., of 1875, Act II., of 1877, and Act VI., of 1881; and see further as to India, 1 Dav. Prec. 403, note.

(*d*) That the same purpose may be effected by a more general power to appear in any court, &c., see *Re Barker*, [1891] P. 251, *ante*, p. 204.

testor there situate or recoverable, or orwise to procure themselves or himself to be constituted, eir as the attys or atty of the sd A. & B. or orwise, the ads or ad of the sd ppty, or the legal repves or repve of the sd testor in India:

Execute bond.

And for this ppose, as the act & deed of the sd A. & B., to exte & deliver such bond, covt, recognizance, or other obligon as may be required upon the grant of such lres of admon or orwise, *& also to rece debts & psonal este*, "movable & immovable ppty wch now, or at any time hrafter, may

Receive rents.

belong to, or form pt of the este of the sd K.," p. 201: And also to take & retain posson or rece the rents & profits of any ppty in India wch shl become vested in the sd A. & B., or the sd C., D., & E., or any or eir of them, by virtue of such devise & grant of lres of admon as afsd, or eir of them, & to exercise all such powers in relon to such ppty as

Execute reconveyances.

may be vested in the sd A. & B.: And upon paymt of the moys secd to the este of the sd K., to exte such reconvces or reles of mtge estes as may be required, & to pay all debts

Pay debts.

due from the este of the sd testor to any pson resident in India: *genl power to give rects*, p. 202: *to arrange & compromise*, p. 205, *clause* xiv., *omittg the words after the word* "arise": *to compound with & make allowces to debtors*, p. 205: *to take & defend legal pcdgs*, p. 204: *to exte deeds, &c., genlly*, p. 206: *to appt substitutes*, p. 207: *to act genlly*, "as the sd A. & B., as such exs & devisees as afsd, could do," p. 206: *ratificon*, p. 207: *to register the power in India*, p. 208. [*Power to be irrevocable*, p. 208.] In wits, &c. (*a*).

(*a*) See note to Precedent iv., p. 211. The practice is to execute in the presence of a notary.

VIII.

TO COMPLETE *a* PURCHASE (*b*).

TO ALL, &c., A., of, &c., *pchaser*, sends greetg: WHAS the sd A. has lately contracted to pchase certn —— & hereds in the parish of ——, & coy of ——, known as the —— este, but the sd pchase has not yet been completed: AND WHAS the sd A. is about to go abroad: NOW THESE PSNTS WITS, &c., that he, the sd A., *appmt of B. as atty*, p. 200, to do or exte all or any of the acts & things hinafter mentd, that is to say: Recitals.

1. To MAKE or take such requons or objons as to the title or evidce of title to the sd este & premes, or orwise in relon thto, as the sd atty shl think fit. To make requisitions.

2. To INSIST upon any such requon or objon, or to withdraw or abandon the same wholly or partially, & eir absolutely or upon the terms of receivg an indemnity or compenson or orwise, as the sd atty shl think fit. Insist on or withdraw requisitions.

3. IN CASE any error, misstatement, or omission in the parlars or description of the premes shl be discovered, to enter into such agrmt as to receivg or allowg compenson as the sd atty shl deem pper. Arrange for compensation.

4. IN THE event of the sd atty takg or makg any objon or requon in respt of the title or orwise wch the vendor shl neglect or refuse to remove or comply with, or in the event of any default on the pt of the vendor in specifically performg the sd contract, then & in any such case, if the sd atty shl so think fit, eir to rescind the contract & to demand the return of & sue for & recover & give a rect for the deposit of £——, pd by him, the sd A., upon the exon of the sd contract, or to take legal pcdgs for determining the validity of any such requon or objon as afsd, or for recoverg damages in respt of Rescind contract or take legal proceedings.

(*b*) Powers of attorney may often be conveniently paragraphed as in this and some of the subsequent forms.

such default as afsd, or for enforcg specific pformce of the contract or orwise in relon thto as circes may require or the sd atty may think fit.

Defend legal proceedings.

5. To DEFEND any legal pcdgs wch may be taken by the vendor to recover damages agst the sd A. for alleged non-pformce of the sd contract, or to determine the validity of any such objon or requon as afsd, or to enforce the specific pformce of the sd contract by the sd A., or orwise in relon to the premes.

Arbitration.

6. To SUBMIT to arbitron, compromise, or abandon any such pcdgs wch may be taken by or agst the sd A. as afsd, or any question or dispute in relon to the premes.

Conveyance and completion.

7. To ACCEPT & take a pper assurce or assurces from the vendor & all other necy pties of the sd —— & hereds, eir to the use of the sd A., his hrs & assns, or orwise: AND to accept, exte, or enter into & do, in the name or on behalf of the sd A., any assurces, deeds, covts, instrumts, & things wch may be deemed necy to or pper for completg the sd pchase, or in relon thto.

8. *To appt substitutes*, p. 207. 9. *Substiton of anor atty on death, &c., of B.*, p. 207. 10. *Ratificon*, p. 207. [*Power to be irrevocable*, p. 208.] IN WITS, &c.

IX.

GENERAL POWER *of* ATTORNEY *to* MANAGE PROPERTY *and carry on* BUSINESS *in* ENGLAND, *with full powers of dealing with* MORTGAGES (*a*).

KNOW ALL MEN, &c., *apptmt of B. as atty*, p. 200: *to manage ppty*, p. 203: *to enter into agrmts with tenants*,

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As to power of attorney by person going abroad.

(*a*) This precedent is adapted to the case of a person going abroad Such a power, if not limited in duration to the principal's absence, would not (at any rate as to persons without notice) be revoked by his return; *secus* if *ex facie* so limited; *Danby* v. *Coutts*, 29 Ch. D. 500. If desired, it

&c., p. 204: *to sell, &c.*, p. 202: AND ALSO to mtge or chge all or any pt or pts of my ppty, whether real or psonal, for the ppose of raisg any sum or sums of moy, wch the sd atty may think fit, for dischging or reducg all or any of the chges & incumbces thron, or any chges or incumbces wch may have been created under the psnt power, & wch shl for the time being be subsistg, or any pt or pts thof resply, or for the ppose of consolidatg any such chges or incumbces, or by way of secy for any such mtge debt or debts, eir in addon to or in substiton, wholly or in pt, for any then subsistg secy or secs for the same, or for orwise effectuatg any of the pposes of these psnts; AND to make any such mtge as afsd, with such powers & provons as he shl think pper: AND to concur in or consent to the transfer of any mtges, chges, or secs affectg all or any pt or pts of my ppty, whether real or psonal, to any pson or psons, whether as pt of an arrangemt for the consolidon of any such mtges, chges, or secs, or orwise: AND to consent to or allow any alteron in the rate of intt upon any such mtges or chges, or the terms of repaymt or redmon, & to allow any arrears of intt upon such mtges or chges to be capitalized & carry intt, & to authorise the rele of any of the secs for any mtge debt or debts; AND to insert in any deed or instrumt for effectg any such transfer or consolidon or other arrangemt as afsd, such powers or provons by way of further secy to the transferee or transferees, or mtgee or mtgees, or orwise as may be deemed pper, & genlly to enter into or concur in such arrangemts in relon to the incumbces for the time being affectg my ppty, whether real or psonal, or orwise to deal with such incumbces, in such mner & with the like powers, authorities,

Power to mortgage.

To concur in transfers of mortgages.

General powers of dealing with mortgages.

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can be made irrevocable under the Conv. Act, 1882, s. 9, for any fixed time not exceeding one year (see above, p. 201, note), so as to afford full protection to purchasers for value dealing under it; but where there is real estate which may have to be dealt with by sale or mortgage, &c., it is sometimes better to have a trust deed instead of a power of attorney; see form in Vol. II., MISCELLANEOUS. As to delegating trust business to an attorney, see above, p. 204, note (*a*).

& discrons in all respts as the sd atty might have done if he were absolutely entled to the sd premes: *to arrange & compromise*, p. 205: *to compound with & make allowces to debtors*, p. 205: *to take & defend legal pcdgs*, p. 204: *to concur with co-owners*, p. 205: *to give rects*, p. 202: *to deposit & invest moys*, p. 202: *to vote at meetgs*, p. 205:

To carry on business.

And also to carry on, manage, & conduct my trade or business of —— at —— or elsewhere for such time & in such mner as my sd atty shl in his sole discron consider advisable: And with full power to my sd atty for the ppose of enablg him to carry on, manage, & conduct the sd

To use offices.

business as afsd, to use & occupy the house & office in wch the same is now or shl for the time being be carried on (the rent, if any, & taxes payable in respt whof, shl be chged

To dispose of capital and effects.

to the acct of the sd business): And for the like ppose to use & dispose of all the capl, credits, stk, & effects wch now are or shl hrafter be employed in, or due or owg in respt of

To employ and dismiss clerks, &c.

my sd business: And also with power for my sd atty to continue to employ such clerks, agents, servants, & other psons as now are employed in or about the sd business, & to hire & employ such other psons for the same or the like pposes or duties, & at such salaries as he shl think pper, & from time to time to dismiss any of such clerks, agents, servants, & other psons as he shl think fit, & to increase & diminish the no. of persons employed in the sd business:

To enter into contracts.

to draw bills, &c., p. 206: And also with full power for my sd atty to enter into such contracts resptg the sd business

To settle accounts, &c.

as he shl think expedient: And to adjust & settle all accts & transons, & compromise or compound any debts or claims wch may be owg by or to me or be claimed or made agst or

To augment or diminish capital.

on behalf of me in relon to the sd business: And with power also for my sd atty from time to time to augment or diminish the capl employed in the sd business as the exigencies thof

To wind up.

may appear to require: And also with full power, if deemed expedient, at any time to discontinue, wind-up, or dispose of the sd business in such mner as he shl think pper: And

To act generally.

genlly to transact & do all mres & things respectg the sd

business in the same mner in all respts as I myself could do: [AND ALSO to apply such pt of my net annl income as may from time to time be considered necy or pper for the expses of the establishmt at my residce at ——, & the maintce of my family & the members of my household, or orwise to incur such expenditure in that behalf as may be deemed pper, & so that as to the extent & scope of such expenditure my sd atty shl have the fullest discron & freedom from responsibility, & his authority in this behalf shl not be revoked or in any mner affected by the happening of any event other than my death or the express revocon by me of this power by writg notified to him (*a*)]: *to exte deeds*, p. 206: *power to act genlly*, p. 206: *to employ agents*, p. 205: *to appt substitutes*, p. 207: *substiton of anor atty on death, &c., of B.*, p. 207: *ratificon*, p. 207. [*Power to be irrevocable*, p. 208.] IN WITS, &c. (*b*).

To keep up establishment.

X.

GENERAL POWER *of Attorney by a* PERSON *going* ABROAD *for a short time. Very short* FORM.

KNOW ALL MEN, &c., *Apptmt of Atty*, p. 200.

1. To ENDORSE or sign my name to any cheques divd or intt warrants, or other instrumts payable to me.

To endorse cheques.

(*a*) The clause in brackets is intended to meet the case where the head of a family may probably become temporarily incapacitated from attending to business. As to dealings under a power of attorney in case of the lunacy or incapacity of the principal, see *Drew* v. *Nunn*, 4 Q. B. D. 661, 23 S. J. 794, 815; and the Conv. Act, 1881, s. 47; above, p. 200, note. The power may be made irrevocable for a year under the Conv. Act, 1882, s. 9; but this would only afford protection to dealings with purchasers for value; see p. 201, note.

Lunacy of principal.

(*b*) A precedent for the management of property in the Colonies can readily be adapted from this; the variations will depend upon the usual course of business in the Colony; the power to register, p. 208, should be added. As to the mode of authenticating powers to be acted upon in the Colonies, see p. 211, note.

Power to act in Colonies.

To receive money or other property, &c.

2. To DEMAND, sue for, & rece or prove in any bkptcy, liquidon, composon, windg up or admon for any moy, chattels, or other ppty now or hrafter belonging or comg to me.

To let and manage estates.

3. To LET & manage all freehd, copyhd & leasehd ppty now or hrafter belonging to me or pchased by my atty, & rece & enforce paymt of the rents thof.

To settle accounts, &c., and pay debts.

4. To SETTLE, compound, submit to arbitron or compromise any accts, disputes, claims, actions or pcdgs in wch I may be concerned, & pay any moy due, or wch my atty may consider due, from me.

To employ agents.

5. To EMPLOY agents for any of the pposes afsd.

To invest.

6. To INVEST any moys reced under this power in the pchase or on the secy of freehd, copyhd or leasehd ppty, or in stks, shares, bonds or debs of Cos, municipal corporons, or public bodies, & to sell or vary such investmts.

To give receipts, &c.

7. To GIVE rects, reles, & indemnities for or relatg to any moy or other ppty pd, delivered or transferred to my atty. IN WITS, &c.

XI.

GENERAL POWER *of Attorney to* MANAGER *of* BANK *in* COLONY.

Recital.

TO ALL, &c., the Bank of —— sends greetg: WHAS the sd Bank has appted A., of, &c., colonial manager of the sd Bank in the colony or province of ——, & is desirous of investg the sd A. with the powers & authorities hinafter mentd: NOW THESE PSNTS, &c., *apptmt of A. as atty of the Bank*, p. 200, in the sd colony of —— for & in the name & on behalf of the sd Bank, to have & exte all & singr the powers & authorities hinafter mentd (that is to say),

Appointment of attorney.

To superintend business.

1. To DIRECT & superintend the business & affairs of the sd Bank in the sd colony, & all branches & agencies of the

sd Bank wch are or shl hrafter be opened or established in the sd colony.

2. To VISIT all branches & agencies of the sd Bank, & to inspect & examine, & if the sd atty shl think pper, to take temporary or permanent posson, as the case may be, of the cash & secs for the time being at any such branch or agency as afsd, & all the books, accts, deeds, papers, & vouchers relatg to the transons thof, & genlly to inform himself of all mres & things in any way connected with the operons & dealgs of such branches & agencies as afsd: AND the sd Bank doth hby direct & require the respive managers, accountants, clerks, & all other officers of or attached to such branches & agencies as afsd, to communicate to the sd atty all such informon as he may think pper to require, & to lay open to him all the accts, vouchers, deeds, lres, & papers whatsr, in their posson or power, relatg to any of the dealgs of such branches & agencies resply, & to deliver to the sd atty upon his demand all such books, accts, vouchers, deeds, lres & papers as afsd, & also all cash, bills, notes, & secs in their or his custody or power, belonging to the sd Bank. Inspect branches.

3. To GIVE such orders & dirons in regard to the conduct or managemt of such branches & agencies as afsd, as to the sd atty shl seem expedient. Give orders as to branches.

4. To SUPERSEDE or suspend any such manager, accountant, clerk, or officer as afsd, for such cause or reason as the sd atty may in his sole discron think sufft, with or witht assng any cause or reason, & eir absolutely or for such time as he may think pper. Suspend servants

5. To REVOKE or make void, suspend or vary all & every or any the powers & authorities wch have been or may hrafter be given to or vested in any of the managers or other officers of such branches & agencies as afsd, by or on behalf of the sd Bank. Revoke powers of servants.

6. To APPT any new manager or managers, accountant or accountants, clerk or clerks, or other officer or officers, as the sd atty may think necy or pper, eir in the place or stead of any manager, accountant, or officer who may have been Appoint new servants.

superseded or suspended as afsd, or in addon to the then existg staff or orwise, & at such rate of remuneron & upon such terms as the sd atty may think reasble: PROVD ALWAYS that any & every such apptmt shl be subjt to approval & confirmon by the Board of Directors of the sd Bank in London, & every pson or psons to be so appted shl hold office subjt in all respts to such approval & confirmon.

Subject to confirmation.

Give powers.

7. TO GIVE to & vest in any manager, accountant, or other officer of any such branch or agency as afsd, whether newly appted or not, such powers & authorities as the sd atty may deem necy or expedient.

8. *To rece debts & psonal este*, p. 201, *omittg the word* "legacies."

9. *To arrange & compromise disputes, &c.*, "betn the sd Bank & any pson or psons in the sd colony," p. 205.

10. *To compound & make allowces to debtors*, p. 205.

11. *To take & defend legal pcdgs*, p. 204.

Deal with debtors.

12. TO ACT on behalf of the sd Bank in all mres incident to or arisg out of the bkptcy or insolvency, or any composon or arrangemt with the credors of any pson or psons indebted or under liability to the sd Bank or claimed so to be, or in the windg up of any Co so indebted or under liability or claimed so to be.

13. *To acquire land*, p. 202, "for the ppose of managing, conductg, & carrying on the affairs, concerns, & business of the sd Bank."

14. *To raise moy on mtge*, p. 203.

15. *To exte deeds, &c.*, p. 206.

Act generally.

16. TO ACT genlly in the conduct & managemt of the business affairs & ppty of the sd Bank in the sd colony in such mner as the sd atty may in his discron think expedient & for the advantage of the sd Bank.

Use seal.

17. FOR ANY of the pposes afsd to use the common seal provd to be used on behalf of the sd Bank in the sd colony.

18. *To appt substitutes*, p. 207.

19. *Ratificon*, p. 207.

20. *Power to register*, p. 208.

AND THESE PSENTS FURTHER WITS, that the sd Bank doth hby nominate & appt B., of, &c., & C., of, &c., jtly, or in case of the death, absce, illness, or incapacity of eir or them, then the other of them solely, to be attys & agents or atty & agent of the sd Bank for & on behalf of the sd Bank to exercise & exte all & any of the powers & authorities hinbfe conferred upon or vested in the sd A., in as full & effectual a mner to all intents & pposes as if the names of the sd B. & C. had been resply hinbfe inserted in lieu of the name of the sd A., but nevs in the sevl events only & durg the periods hinafter mentd, that is to say, in case the sd A. shl depart this life, or from any cause cease to be the colonial manager of the sd Bank, then durg the period that shl elapse betn his dece or ceasg to be such manager, & the arrival in the sd colony of his duly appted successor, or in case he shl at any time be absent from the sd colony, or shl be prevented by illness or other incapacity from actg, & shl not have appted a substitute or substitutes to act for him under the afsd power in that behalf, then durg the period of such his absce, illness, or incapacity. IN WITS, &c. (*a*). Appointment of substitutes.

XII.

POWER *of* ATTORNEY *to manage* MERCHANTS' BUSINESS *in a* COLONY.

TO ALL, &c., A., of, &c., & B., of, &c., tradg in ptnp as —— at —— under the firm of A. B. & Co., send greetg:

Recitals: Apptmt of atty, p. 200, *mutatis mutandis*.

To transact, manage, carry on, & do all & every business, mres & things requisite & necy, or in any mner connected with or havg reference to our sd business in —— afsd: AND To transact business. To buy and sell.

(*a*) As to the authentication of powers of attorney to be used in the Colonies, see p. 211, note.

for such ppose to make & effect all such sales, pchases, dealgs, & transons as the sd atty may deem necy or expedient, of or in goods, wares, merchandise, cargoes, or other ppty whatsr: *to draw bills, &c.*, p. 206: And also to conduct all correspondce or mres of business, by openg & answerg all lres addressed to our sd firm in —— afsd: And to supervise, direct, & manage all affairs & ppty in —— afsd belonging to us, or in wch we are or may become interested; & to do & transact, or join with any other pson or psons in doing or transactg, all such acts & things wch the sd atty shl deem expedient for the benefit or proton of the intts of our sd firm as fully & effectually as we could have done if psonally psnt: *powers to rece debts & psonal este*, p. 201: *to settle accts, &c.*, p. 205: *to accept composons, &c.*, p. 205: *to take pcdgs*, p. 204: *to exte deeds, &c.*, p. 206: *to act genlly*, p. 206: *to appt substitutes*, p. 207: *ratificon clause*, p. 207: *substitution of anor atty*, p. 207. In wits, &c. (*a*).

To conduct correspondence.

To manage affairs generally.

XIII.

TO *accept* Composition *for* Debt *and receive* Dividends, *&c.*

Appointment of attorney.

KNOW ALL MEN, &c., that I, A., carrying on the business of ——, at ——, under the firm of A. B. & Co., do hby appt C., of, &c., my atty, for & in the name & on behalf of me & my sd firm (of wch I am the sole member), to accept, assent, or agree to, or enter into any composon, arrangemt, liquidon, or agreemt, wch has been or may be proposed, made, or entd into by Messrs. D. & Co., of, &c., or any ptner in their sd firm, to, with, or for the benefit of their or his credors, in respt of a debt or sum of £——, wch is now due to me or my sd firm from the sd Messrs. D. & Co., on balce of acct for goods supplied, or any other debt or sum wch is now or

To accept composition.

(*a*) As to the mode of execution, see p. 211, note.

may for the time being be so due, or any intt due or to accrue due upon the same or any pt thof, or any claim or demand wch I or my sd firm may have agst the sd Messrs. D. & Co., or any ptner in their sd firm: And also to attend psonally or orwise & vote at meetgs of the credors of the sd Messrs. D. & Co., or any ptner in such firm, & if need be to appt himself the sd, *atty*, or any substitute to be my proxy for that ppose, & to prove for, demand, rece, & recover all divds, composons, & sums of moy whatsr wch are or may be or become due or payable to me or my firm under or in psuance of any such composon, arrangemt, liquidon, or agreemt as afsd, or under any bkptcy or orwise howsr, in respt of the sd debt or sum of £——, or any such other debt or sum, claim or demand as afsd, or in respt of any intt due or to accrue due upon the same, or any pt thof: And to settle & adjust all accts & questions dependg or arisg betn me or my sd firm & the sd Messrs. D. & Co., or any ptner in their firm, or the trees or tree actg under any such composon, liquidon, or arrangemt as afsd, or in bkptcy, or any other pson or psons in relon to the sd debt, or any of the mres afsd: And upon rect or recovery of any such divds or moys as afsd, to sign & exte effectual rects, reles, or dischges for the same: And also, if it shd appear necy or expedient, *to take & defend legal pcdgs*, p. 204: *to arrange & compromise*, p. 205: *to exte deeds, &c.*, p. 206: *to act genlly*, p. 206: *to appt substitutes*, p. 207: *ratificon*, p. 207. [*Power to be irrevocable*, p. 208.] In wits, &c.

Vote at meetings.

Settle accounts.

Give receipts.

XIV.

DEED *giving* Further Powers *to an* Attorney.

TO ALL, &c., A., of, &c., sends greetg: Whas by deed poll or power of atty, dated, &c., under the hand & seal of the sd A., he, the sd A., has appted X., of, &c., & in the event of his death or the other events thrin mentd Y., of,

Recital.

Power of attorney.

&c., to be the atty of the sd A. with the powers thrin mentd: Desire to extend powers. AND WHAS the sd A. is desirous of givg to the sd X., & in the events afsd to the sd Y., the further or addonal powers Extension of powers. & authorities hinafter contd: NOW THESE PSNTS WITS that the sd A. doth hby give to & vest in the sd X., & in the event of his death or any of the other events mentd in the sd recited deed poll of, &c., the sd Y., the follg further or addonal powers & authorities, that is to say, in the name & on behalf of the sd A., *here insert the addonal powers:* Old powers preserved. *ratificon*, p. 207: PROVD ALWAYS that nothing hrin contd shl in anywise prejudice or affect the powers or authorities given or conferred by the sd recited deed poll of, &c., & this psnt power of atty shl take effect & be in force concurrently with & solely by way of enlargemt & extension of the sd recited power of atty. [*Power to be irrevocable*, p. 208.] IN WITS, &c.

XV.

DEED *revoking Power of Attorney and appointing* NEW ATTORNEY.

Recitals. TO ALL, &c., A., of, &c., sends greetg: WHAS by a deed Power of attorney. poll or power of atty, dated, &c., under the hand & seal of the sd A., the sd A. has appted B., of, &c., to be his atty with the powers & authorities in the sd deed poll mentd: Desire. AND WHAS the sd A. is desirous of revokg the powers given to the sd B. as afsd, & of apptg C., of, &c., to be his atty Revocation. in place of the sd B.: NOW THESE PSNTS WITS that the sd A. doth hby revoke & make void all & singr the powers & authorities by the sd hinbfe recited deed poll given or conferred to or upon the sd B.: PROVD ALWAYS Not to affect acts previous to revocation becoming known. that the revocon hinbfe contd shl not prejudice or affect anything lfully done or caused to be done by the sd B., or any substitute or substitutes actg under him, in the exercise or intd exercise of any of such powers or

authorities as afsd in the interval betn such revocon & the time of the same becomg known to him or to his substitute or substitutes: AND THE sd A. doth hby ratify & confirm everything lfully done or caused to be done by the sd B. or any substitute or substitutes actg under him in the exercise or intd exercise of any of such powers or authorities, includg anything so done or caused to be done in such interval as afsd: AND THESE PSNTS FURTHER WITS, *apptmt of C. as atty*, p. 200, to exercise & exte all or any of the powers & authorities by the sd deed poll given or conferred by the sd A. to or upon the sd B. in as full & ample a mner to all intents & pposes as if the name of the sd C. had been inserted in the sd deed poll in the place of the sd B. *Ratificon*, p. 207. [*Power to be irrevocable*, p. 208.] IN WITS, &c.

Ratification.

Appointment of new attorney.

BONDS (*a*).

FORMAL PARTS.

From one obligor to one obligee without recitals.

1. KNOW ALL MEN by these psnts that I, *obligor*, of, &c., am bound to, *obligee*, of, &c., in the sum of £——, *usually twice the amt of ppal moy to be secd*, to be pd to the sd, *obligee*, his exs, ads, or assns, or to his or their atty or attys, for wch paymt I bind myself (*b*) by these psnts. Sealed with my seal. Dated this —— day of ——.

As to the use of bonds.

(*a*) See also INDEMNITY. Though bonds are usually employed for some purposes in preference to deeds of covenant, especially where the stipulations to be performed are in the alternative, a deed of covenant is in most cases equally advantageous, and frequently (as where the obligation has to be qualified by provisoes, &c.) more convenient; and where there are mutually dependent stipulations to be performed by each party, the form of a deed of covenant is essential. In the case of an agreement for payment of an annuity, or of a sum of money by instalments (unless the whole amount is to become immediately payable on default in payment of an instalment), a bond may be preferable, inasmuch as upon the obligor making default, judgment will be entered up for the penalty and stand as a security for the future payments, for which execution (by the process of *scire facias*) may be issued as they fall due without the necessity of bringing a fresh action for each payment; but even in this case a deed of covenant might be made to have the same operation as a bond by inserting a penal clause. See Bullen and Leake's *Precedents of Pleadings*, 4th ed., p. 113; 1st ed., pp. 68, 69. Any of the forms of bond could, without difficulty, be converted into deeds of covenant if desired.

Stamp.

As to the stamp, see the Stamp Act, 1891, ss. 42, 60, and 86, and 1st sched., tit. BOND AND MORTGAGE.

Omission of the words "heirs, &c."

(*b*) The usual words binding the "heirs, &c.," of the *obligor* are here omitted; see the Conv. Act, 1881, s. 59, and above, p. 2, note; but it is thought better in most cases to retain those words in the condition of the bond. The practice of specially mentioning the representatives and assigns of the *obligee* is also for the most part adhered to; but the words

THE CONDON of the above written bond is such that if, &c., then the above written bond shl be void, or orwise shl remain in full force.

Signed, sealed, & delivered }
in the presce of }

From several obligors to several obligees, with recitals.

II. KNOW ALL MEN by these psnts that we, *obligors*, are bound to, *obligees*, in the sum of £——, *usually twice the amt of ppal moy to be secd*, to be pd to the sd, *obligees*, their exs, ads, or assns, or to their atty or attys, for wch paymt, *if two obligors*, "we bind ourselves & each of us," *if three or more obligors*, "we bind ourselves & every [four, three] two & one of us," *as the case may be*, jtly & sevlly (*c*), by these psnts. Sealed with our respive seals. Dated this —— day of ——.

WHAS, &c. NOW THE CONDON, &c., *as in last form*.

Signed, sealed & delivered }
by the above-named —— }
in the presce of }

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might usually be omitted, if the draftsman should so prefer, except in the (not very common) case of a bond relating to land, in which it would be better to retain them, as the 58th section of the above Act (referred to p. 3, note) mentions covenants only, and not bonds, differing in this respect from sections 59 and 60. A middle course, which would save the repetition of the words in question throughout the instrument, and which may often be adopted in bonds as well as other instruments, would be to provide that the names of the parties or the designations by which they are described shall, where the context so admits, be deemed to include their "hrs, exs, ads, & assns" respectively, as the case may be.

(*c*) It would be sufficient to say, "we bind ourselves jtly & sevlly," whatever be the number; see R. S. C., Order XVI., rr. 4 and 6.

PRECEDENTS.

I.

BOND *from* ONE OBLIGOR *to* ONE OBLIGEE *for* PAYMENT *of a* SUM *of Money and Interest.* VARIATIONS *for* SEVERAL OBLIGORS *or* OBLIGEES.

Bond from A. [*B. & C.*] *to D.* [*E. & F.*] *see* pp. 228, 229.

Condition. THE CONDON of the above-written bond is such that if the above bounden A., his [A., B., & C., or any of them, their or any of their] hrs, exs, or ads, shl on the —— day of ——, pay to the above-named D., his hrs, exs, ads, or assns, [D., E., & F., their exs, ads, or assns, jtly (*a*)] the sum of £—— with intt for the same from the date of the above-written bond, at the rate of — p.c. p.a., witht any dedon, THEN, &c.

II.

BOND *for* PAYMENT *of money by* INSTALMENTS *with* INTEREST *on each instalment.* VARIATION, *where* INTEREST *is to be paid* HALF-YEARLY *on the whole* PRINCIPAL SUM *for the time being due, and where in case of* DEFAULT *in payment of any* INSTALMENT

As to bonds to joint obligees. (*a*) Under the Conv. Act, 1881, s. 60, the benefit of a bond in this form would survive on the death of any of the obligees; and by s. 61 the receipt of the survivors, &c., would be a good discharge on payment, notwithstanding the severance of the joint account. As to the presumption that joint obligees are in equity tenants in common of the debt, see *Steeds* v. *Steeds*, 22 Q. B. D. 537; but the presumption is of course capable of being rebutted, *e.g.*, in the case of a loan of trust money (*ib.* 542). As to the right to receive interest on a bond beyond the amount of the penalty, see *Hatton* v. *Harris*, [1892] A. C. 547.

or INTEREST, *the* WHOLE PRINCIPAL SUM *is to become immediately due (b).*

Bond from A. to B., in a sufft penalty, see p. 228.

THE CONDON of the above-written bond is such, that Condition. if the above bounden A., his hrs, exs, or ads, shl pay to the above-named B., his exs, ads, or assns, the sum of £—— with intt for the same from the date of the above-written bond, at the rate of — p.c. p.a., by the instalmts, at the times & in mner follg (that is to say), the sum of £——, pt thof, with intt upon the same instalmt from the date & at the rate afsd, on the —— day of ——, the sum of £——, further pt thof, with intt upon such instalmt from the date & at the rate afsd, on the —— day of ——, & the sum of £——, the residue thof, with intt upon such residue from the date & at the rate afsd, on the —— day of —— [*or*, the sum of £—— by five equal yrly paymts on the —— day of —— in every yr, the first of such paymts to be made on the —— day of —— next, & shl also in the meantime & until the whole of the sd sum of £—— shl be pd off in mner afsd, pay to the sd B., his exs, ads, or assns, intt for the same sum of £——, or for so much thof as shl for the time being remain due & unpd, at the rate of — p.c. p.a., to be computed from the date of the above-written bond, by half-yrly paymts, on the —— day of —— & the —— day of —— in every yr, the first of such paymts of intt to be made on the —— day of —— next], THEN the above-written bond shl be void, orwise the same shl remain in full force: [But so nevs that in case default shl be made in paymt of any of the sd respive sums of ppal or intt, or any pt thof resply within *thirty* days after the day or time hinbfe mentd & appted for

For payment of instalments with interest thereon.

By instalments with interest on balance.

Whole principal to become due on default (*c*).

(*b*) See p. 228, note. Where in case of default the whole of the money is to become immediately payable, a deed of covenant will be more convenient than a bond.

(*c*) That this stipulation is valid and enforceable, see *Sterne* v. *Beck*, 1 De G. J. & S. 595; *Protector, &c., Co.* v. *Grice*, 5 Q. B. D. 592; *Ex parte Burden*, 16 Ch. D. 675. As to what amounts to a waiver of the provision, see *Langridge* v. *Payne*, 2 J. & H. 423; *Williams* v. *Stern*, 5 Q. B. D. 409.

paymt thof resply, then & in any such case the whole of the sd ppal sum of £—— or so much thof as shl then remain due & unpd, togr with the intt wch shl have accrued due thron, shl forthwith after such default become payable to the sd B., his exs, ads, or assns, & be recoverable by virtue of the above-written bond.] THEN, &c.

III.

BOND *for Payment of* ANNUITY *to* ONE *of* TWO PERSONS *and the* SURVIVOR *of them for their respective* LIVES. *Variation for annuity to* HUSBAND *and* WIFE *jointly and a* REDUCED *annuity to the* SURVIVOR.

Bond from A. to B. & C., in a penalty of twice the total amt of all the paymts of the anny accdg to its utmost probable duron, see pp. 228, 229.

Condition

THE CONDON, &c., is such that if the above bounden A., his hrs, exs, or ads, shl pay to the sd B. durg his life an anny or yrly sum of £——, by 4 equal qtrly paymts, on the —— day of ——, &c., in every yr, & shl pay an apportioned pt of such anny up to the day of the death of the sd B. to his exs or ads (*a*), & shl make the first of such paymts on the —— day of —— next, & shl also, in case the sd C. shl survive the sd B., pay to the sd C. durg the then remr of his life a like anny or yrly sum of £——, payable on the like qtrly days, & shl pay an apportioned pt of such last-mentd anny up to the death of the sd C. to his exs or ads, the first qtrly instalmt of such last-mentd anny or a proportionate pt thof, for the interval betn the death of the sd B. & the first of the sd qtrly days wch shl happen thrafter, to be payable on such last-mentd day, AND shl make all the sd paymts

For payment of annuity quarterly.

(*a*) The provisions for apportionment might probably be omitted; see the Apportionment Act, 1870, 33 & 34 Vict. c. 35.

witht any dedon (except for income-tax), [*for an anny to husbd & wife & a reduced anny to the survor, say,* "shl pay to the sd B. & C. his wife durg their jt lives an anny of £—— sterlg, & to the survor of them from & after the death of such one of them as shl first die durg the remr of the life of such survor an anny of £—— sterlg, such respive annies to be considered as accruing from day to day, but to be payable by equal qtrly paymts on the —— day of ——, &c., in every yr witht any dedon (except for income-tax), & the first qtrly paymt to be made on the —— day of —— now next ensuing, & so that if eir of the sd annuitants shl die in the interval betn any two of the sd qtrly days of paymt an apportioned pt of such respive annies (as the case may be) shl be payable to the survor of the sd annuitants (whose rect shl be a good dischge for the same), or to the exs or ads of such survor (as the case may be) :] [Provd that the sd anny of £—— payable durg the jt lives of the sd annuitants shl be payable as to one moiety thof to the sd B. on his sole rect, & as to the other moiety thof to the sd C. as her septe este & on her sole rect, & so that she shl not have power durg her coverture to dispose of or chge her intt in eir of the sd annies by anticipon (*b*)."] Then, &c.

Variation for annuity to husband and wife.

(*b*) In the absence of this clause, under the old law the husband might have charged or assigned the whole annuity during their joint lives, and the whole of it would have gone to his creditors in bankruptcy; *Ward* v. *Ward*, 14 Ch. D. 506; *Re Bryan*, *ib.* 516; but under the new law since the Married Women's Property Act, 1882, the husband would only take half, and the other half would go to the wife for her separate use, and could not be affected by the husband or his creditors; *Re March*, 27 Ch. D. 166; *Re Jupp*, 39 Ch. D. 148, commented on in *Re Dixon*, 42 Ch. D. 306. As to the effect of a gift to A. and B. (husband and wife) and C., with reference to the old doctrine of the unity of husband and wife, and tenancy by entireties, as affected by the Married Women's Property Act, 1882, see *Re March*, *ubi supra*.

As to change effected by M. W. P. Act, 1882.

IV.

BOND *by a* PRINCIPAL *and* TWO SURETIES *for securing the* BALANCE *due on an* ACCOUNT CURRENT *with a* BANKING COMPANY, *with a* PROVISO LIMITING *the* LIABILITY *of the* SURETIES. VARIATIONS *where the* CUSTOMERS *and the* BANK *are both* FIRMS, *and the Security is to be continued notwithstanding a* CHANGE *in either* FIRM; *also where a* FRESH BOND *is to be* SUBSTITUTED *on a* CHANGE *in the* CUSTOMERS' FIRM (*a*).

Jt & sevl bond from A., ppal debtor, & C. & D., sureties, to the —— Bank Limd, & their assns, *or from A. & B., ppal debtors,* "carrying on business in co-ptnp togr at, &c., as ——, under the firm of A. & Co.," *& C. & D., sureties, to L., M., & N.,* "bankers & co-ptners, carrying on business at, &c., under the firm of L. & Co.," *see* p. 229.

Recital of agreement.

WHAS the sd Bank [firm of L. & Co.] at the reqt of the sd A. [& B.], have agrd to open & keep an acct with him [them], & to make advces to or for the accommodon of the sd A. [& B., & other the pson or psons who may hrafter be in ptnp with them or eir of them in the sd business now carried on by the sd firm of A. & Co.], upon havg the paymt of the balce wch may be from time to time due on any such acct to the sd Bank [the sd bankg firm, or the psons or pson for the time being carrying on the sd bankg business], secd by the jt & sevl bond of the sd A. [& B.] & the sd C. & D. as

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Guarantees to bankers.

(*a*) See also the forms of guarantees to bankers, pp. 43, 46. A deed of covenant might in this case be more convenient in form than a bond. If one surety executes the bond and the other does not, the former is discharged; *Evans* v. *Bremridge,* 8 De G. M. & G. 100. As to non-execution by principal, see *Cooper* v. *Evans,* 4 Eq. 45. As to continuing guarantee being revoked by a change in the constitution of either firm, in the absence of agreement to the contrary, see Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 18; *ante,* p. 45, note.

sureties for him [them]. NOW THE CONDON, &c., that if the sd A., [B.] C., & D., or any of them, or the hrs, exs, or ads of them or any of them shl from time to time, & at all times hrafter, pay or cause to be pd to the sd Bank or their assns [to the sd bankg firm, or the psons or pson for the time being carrying on the bankg business now carried on by the same firm, or their or his respive exs, ads, or assns], All such sums of moy as shl at any time be due to the sd Bank or their assns [to the sd bankg firm, or the psons or pson for the time being carrying on the sd bankg business, or their or his respive exs, ads, or assns] by or from the sd A., his exs or ads, [the sd A. & B., or eir of them, alone or jtly with any other pson or psons who may hrafter carry on the business now carried on under the sd firm of A. & Co. in ptnp with them or eir of them, or by or from the exs or ads of them, him, or any of them], for or on acct of bills, drafts, or notes accepted, pd, or discounted, or advces or paymts made to or for the use, accommodon, or convenience of the sd A., his exs or ads, [the sd A. & B. or eir of them, alone or jtly with any future ptner or ptners in their sd business, or the exs or ads of them, him or any of them], or for or on acct of intt, commission, or any other usual or lful chges wch may be payable in respt of or incident to the transons afsd, or any of them, togr with all costs & expses wch may be incurred or sustained by reason or in conseqce of the premes : AND so that the neglect or forbearce of the sd Bank or their assns [the sd bankg firm or the pson or psons from time to time carrying on the sd bankg business] in enforcg paymt of any moys, the paymt whof is intd to be hby secd, or the givg time by them [them or him] for the paymt thof, shl not in any way rele the sd C. & D., or eir of them, their or eir of their hrs, exs, or ads, in respt of their or his liability under the above-written bond (*b*) : BUT so also that the total amt to be

Condition.

Giving time for payment not to release sureties.

(*b*) As to the doctrine that a surety is released by the creditor giving time to the principal debtor without his consent, or any other act altering the position of the surety to his prejudice, a doctrine which is applied

Release of surety.

Provision limiting liability.

Provision for change in firm of obligors.

recoverable on the sd bond agst eir of them the sd C. & D., or his hrs, exs, or ads shl not exceed £—— : [Or in case any change shl at any time take place in the sd firm of A. & Co., by the death or retiremt of the psnt ptners or eir of them, or the admission of any new ptner or ptners or orwise, then if the sd A. & B., or their respive hrs, exs, or ads shl procure both or all the ptners for the time being in the sd firm, togr with the sd C. & D., or their respive exs or ads, at their own costs & chges to exte & deliver to the sd Bank or their assns [the sd bankg firm or the psons or pson for the time being entled to the benefit of the above-written bond] a bond similar to the above-written bond, & in the like penalty, & with a condon similar to this psnt condon, includg this psnt clause, but with the names of the ptners for the time being in the sd firm of A. & Co. substituted for the names of the sd A. & B., & with such other alterons as the deaths of pties or other changes of circes may require]. Then, &c.

V.

BOND *by an* Intended Husband *for securing a* Sum *of* Money *to the* Intended Wife *in case of her* Surviving *him.* Variations *where it is to* Exercise *a general* Testamentary Power *of* Appointment *in her favour* (*a*).

Bond from A., intd husbd, to C. & D., trees, see pp. 228, 229.

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with great strictness, and to exclude which so as to make the position of the creditor secure, the insertion of a special clause in the contract is often necessary, see the notes to *Rees* v. *Berrington*, 2 W. & T. Lead. Cas. Eq.; 2 Dav. Prec., Part 2, p. 503; Goodeve on Personal Property, 179, note (*m*). As to the effect of releasing a co-surety, see *Nicholson* v. *Revill*, 4 Ad. & El. 675; *Thompson* v. *Lack*, 3 C. B. 540; as to the effect of the death of a co-surety, see *Beckett* v. *Addyman*, 9 Q. B. D. 783; and as to bankruptcy, see the Bankruptcy Act, 1883, s. 30 (4).

As to

(*a*) Whatever may be the effect of the provisions of the Married

Recital of intd marre betn A. & B., [*& instrumt creatg power of apptmt, if any.*] AND WHAS upon the treaty for the sd intd marre, it was agrd that in conson of such marre, the sd A. shd secure to the sd B. the sum of £——, in the event of her survivg him, by enterg into the above-written bond with the sd C. & D., as trees for the sd B., with such condon for makg void the same as is hrunder written: NOW THE CONDON, &c., that if the sd intd marre shl take place within six calr months from the date of the above-written bond, & the sd B. shl survive the sd A., & the exs or ads of the sd A. shl pay [*or*, the sd A. shl, by his will or any codl thto in exercise of the sd power of apptmt, bequeath or direct to be pd or orwise secure (*b*)] to the sd B. the sum of £——, to be pd to her or her exs or ads within —— calr months after the dece of the sd A. witht any dedon, & the same shl be duly pd accdly witht any dedon, or if the sd intd marre shl not take place within six calr months from the date of the above-written bond, or if the sd B. shl not survive the sd A., THEN, &c.

Recitals.

Agreement to execute bond.

Condition.

Women's Property Act, 1882, as to post-nuptial contracts between husband and wife, it is doubtful whether the Act has any effect on an ante-nuptial contract of this nature, since the provision in section 12 enabling a wife to sue her husband in respect of her separate property does not seem to apply; the bond should therefore be given to trustees. As to the effect of such ante-nuptial contracts under the old law, see *Fitzgerald* v. *Fitzgerald,* L. R. 2 P. C. 83; and as to post-nuptial contracts, see *Butler* v. *Butler,* 14 Q. B. D. 831, 16 Q. B. D. 374.

Ante-nuptial contracts between husband and wife.

An obligation for payment of money after death constitutes a debt proveable in the bankruptcy of the obligor; *Barnett* v. *King,* [1891] 1 Ch. 4.

Bankruptcy of obligor.

(*b*) A covenant to exercise a testamentary power of appointment in a particular way, or not to exercise it in any other way, is not specifically enforceable, and could only be made the foundation of an action for damages against the representatives of the covenantor; but, if the power is exercised in contravention of the covenant, the appointed fund would be assets for payment of debts, including the debt under the covenant; *Re Parkin,* [1892] 3 Ch. 510.

As to covenant to exercise a testamentary power of appointment.

VI.

BOND *from a* LESSEE *and* SURETY *for* PAYMENT *of* RENT, *&c.*

Jt & sevl bond from A., the lessee, & B., the surety, to C., the lessor, see pp. 228, 229.

Recitals. *Recital of lease from C to A.*: AND WHAS the sd lease was agrd to be grted by the sd C. upon condon that the above

Agreement for bond. bounden B. shd join as a surety with the sd A., in a bond for the due paymt of the rent reserved by [& pformce of the

Condition. covts & condons contd in] the sd lease: NOW THE CONDON, &c., that if the sd A., his exs, ads, or assns, or the sd B., his hrs, exs, or ads shl, durg the continuce of the sd lease, duly pay to the sd C., his hrs [*or, if an underlease*, exs, ads] or assns, the rent thby reserved upon the respive days thby appted for paymt thof, or within —— days next after such respive days [& shl durg the continuce of the sd lease duly observe & pform all & singr the covts & condons thrin contd, & on the pt of the sd A., his exs, ads, & assns, to be observed & pformed]: AND so that, &c., *givg time for paymt of rent, &c., not to dischge B.*, p. 235, *mutatis mutandis*, THEN, &c.

VII.

BOND *by a* RENT COLLECTOR *or other* AGENT *to* ACCOUNT (*a*).

Bond from A. to B., see p. 228.

Recital of apptmt of A.: NOW THE CONDON, &c., that if the above bounden A., his exs or ads, shl at all times

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(*a*) Private bonds of this kind are probably much less common than formerly, owing to the action of the guarantee societies. For cases of

hrafter whenever required by the sd B., his [hrs] exs, ads, or assns, render to him or them a true & full acct of all sums of moy reced, pd, & disbursed by the sd A., as such recer [agent] as afsd, or orwise for or on acct of the sd B., his [hrs] exs, ads, or assns, & shl duly pay to the sd B., his [hrs] exs, ad, or assns, on demand all & every the sum & sums with or for wch the sd A., his exs or ads, shl be chgeable or acctable in respt of such receivership [agency] as afsd, togr with all costs, damages, & expses occasioned by any default on the pt of the sd A. in the pformce of his duties as such recer [agent] as afsd, & shl at any time on demand pduce, transfer, or deliver to the sd B., his [hrs] exs, ads or assns, all secs, books, & papers belongg to him or them wch shl be in the hands or custody of the sd A., his exs or ads, togr with the legal or pper rects or vouchers for the paymts & disbursemts afsd, THEN, &c.

VIII.

BOND *with Two Sureties for the* FIDELITY *of a* CLERK *or other person in the Employment of a sole* TRADER *or* FIRM (*so as to* KEEP ALIVE *the* OBLIGATION *notwithstanding any* CHANGE *in the* PERSONS *carrying on the business*) *or a* PUBLIC COMPANY; *the* SURETIES *being Liable to a* LIMITED AMOUNT. VARIATION *where the* CLERK *is* ELECTED ANNUALLY *by a Company* (*b*).

Jt & sevl bond from A. (*clerk*) *& B. & C.* (*sureties*), *to D., or D. & E.*, "carrying on business in co-ptnp togr as, &c.," *or to*, "the —— Co," *see* p. 229.

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actions on such bonds, see *Belfast Banking Co.* v. *Hamilton*, 12 L. R. (Ir.) 105, and *Guardians of Thornbury* v. *Greenfield*, Law Journal Newspaper, 1887, p. 452; *Mayor of Durham* v. *Fowler*, 22 Q. B. D. 394.

(*b*) Forms of bonds of this kind are given in some statutes, *e.g.*, in the schedule to the Building Societies Act, 1874. See notes to Precedent IV., *ante*.

Recitals. Service. WHAS the sd D. [& E.], *or*, "the sd Co," has [have] agrd to take the above-named A. into his [their] service as clerk, or to act in such other capacity as the sd D. [& E.], or other the pson or psons for the time being carrying on the above-mentd business of ——, *or*, "the Board of Dirors of the sd Co," may from time to time require or appt, or as may be from time to time agrd upon with the sd A. [for the period of 1 yr from the —— day of ——], upon the sd A. & the sd B. & C., as sureties for him, enterg into the above-written bond or obligon for the fidelity of the sd A., while in such employmt as afsd: [AND WHAS the sd A. may hrafter be re-elected to or continued in such office from time to time for some further period or periods, & it is intd & agrd that this secy shl be & remain in force durg the whole of the time durg wch the sd A. shl be in the service of, or employed by the sd Co in such capacity or in any other capacity] (*a*).

Security to continue.

Condition. NOW THE CONDON, &c., that if the sd A. shl at all times hrafter, so long as he shl be in the service or employmt of the sd D. [& E. or eir of them] alone or jtly with any other pson or psons who may from time to time carry on the sd business of —— in ptnp with him [them or eir of them], or of any other pson or psons who may hrafter carry on such business after the death or retiremt of the sd D. [or E.], *or*, "of the sd Co," as clerk or in any other capacity [whether by virtue of his psnt apptmt to such office or of any re-apptmt thto or orwise,] faithfully, honestly, & diligently pform & dischge the sd service & all the duties wch may devolve upon him the sd A., as such clerk or orwise as afsd, & shl, whenever required, duly & faithfully acct for & pay or deliver to the sd D. [& E.,] or the pson or psons from time to time carrying on the sd business as afsd, or the exs or ads of him, them, or any of them, *or*, "to the sd Co," for all moy, goods, & ppy whatsr for or with wch the sd A. may be in

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(*a*) If the office be an annual one, due performance for one year would, unless otherwise provided, satisfy the bond; 2 Wms. Saunders, 415 *b*, note (*h*).

anywise acctable or chgeable as such clerk or orwise as afsd: Or, in case the sd A., B., & C., or any of them, their or any of their hrs, exs, or ads shl, when required, make satisfon to the sd D. [& E.,] or the pson or psons from time to time carrying on the sd business as afsd, or the exs or ads of him, them, or any of them, *or*, "to the sd Co," for all moys, goods, or ppty wch may be lost, misapplied, or unlawfully disposed of by the sd A. while in such service or employmt as afsd, or shl not be duly accted for or pd or delivered as afsd; & shl keep the sd D. [& E., & each of them,] & such pson or psons as afsd, & the exs or ads of him, them, & every of them, *or*, "the sd Co," indemnified agst all losses, damages, & expses whatsr, by reason or in conseqce of any such act or default of the sd A.: And so that any forgiveness or forbearce on the pt of the psons or pson from time to time carrying on the sd business, or the exs or ads of any such psons or pson or any of them, *or*, "the sd Co," towards the sd A. in respt of his failure or neglect to pform such services & duties, or to make such paymts as afsd, shl not in any way rele or exonerate the sd B. & C., or eir of them, their or eir of their hrs, exs, or ads, in respt of their or his liability under the above-written bond: But so also that each of them, the sd B. & C., or his hrs, exs, or ads, shl not septely or individually be liable to pay a larger sum than £——, by virtue of the above-written bond, Then, &c.

Giving time not to affect liability of sureties.

Limitation of liability of sureties

IX.

BOND *by a* Person *in an* Office *of* Public Trust, *with* Surety *to* Account (*a*).

Jt & sevl bond from A. & B. to C. (*b*), *see* pp. 228, 229:

(*a*) See variations in the last precedent where the office is an annual one.

(*b*) The person to be made obligee will be determined by statute or the practice of the office.

THE CONDON, &c., that if the sd A., his exs or ads, shl from time to time & at all times hrafter duly & faithfully acct for, apply, pay, transfer, & deliver up all & every the sum & sums of moy & ppty wch shl come to the hands or posson of him, the sd A., or for or with wch he shl be chgeable or acctable by virtue of his office of ——, or in conseqce of his apptmt to such office [accdg to the diron & true intent & meang of the statute of the —— & —— yrs of the reign of her psnt Majesty, chapter ——, intituled, &c., or any other statute or statutes or rules or regulons wch may hrafter from time to time be in force for regulatg the sd office or in relon thto]: And so that, &c., *givg time not to affect liability of surety, & limon of liability of surety*, p. 241, *mutatis mutandis*, Then, &c.

X.

SURETYSHIP Bond *for a* Public Officer, *for a limited amount* (*the* Principal *not being a* Party) (*a*).

Bond from A., surety, to B. & C. (*b*), *& the survor of them, his exs or ads, see* pp. 228, 229.

Recital of apptmt of D. to office, &c.: NOW THE CONDON, &c., that if the sd D. shl from time to time & at all times well & truly pform & fulfil all the duties required by the statute made, &c., or any other statute now in force or hrafter to be passed in any way relatg to the office of ——, or required by any rule or regulon htofore made, or hrafter at any time or times to be made in psuance of any such statute or orwise, to be pformed by him, the sd D., as such —— as afsd, & shl well & faithfully exte all the trusts re-

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(*a*) See variations in Precedent VIII., where the office is an annual one.

(*b*) The person to be made obligee will be determined by statute or the practice of the office.

posed or wch shl or may be reposed in him as such ——, or in case of any default or defaults thrin if the sd D., his hrs, exs, or ads shl from time to time pay to, *some public officer*, for the time being for the use of the pson or psons who shl or may be entled thto or intted thrin all such moys as shl or may be payable by or chgeable to the sd D., his hrs, exs, or ads, for or in respt or in conseqce of such default or defaults, or if the sd A., his hrs, exs, or ads shl pay such moys to an amt not exceedg in the whole £——, And so that, &c., *givg time not to affect liability of surety, see* p. 241, Then, &c.

XI.

BOND *by* Surety *for the due* Observance *by another of* Articles *of* Partnership (*a*).

Bond from A., surety, to B. & C., see pp. 228, 229.

Recite articles of ptnp betn B., C., & D.: And whas it was pt of the arrangemt for takg the sd D. into the sd ptnp that the sd A. shd enter into & exte a bond for the due observce by the sd D. of the sd articles of ptnp: NOW THE CONDON, &c., that if the sd D. shl faithfully pform & observe all & every the terms, provons & agrmts in the sd articles of ptnp contd & on his pt to be pformed & observed, & if the sd A., his hrs, exs, or ads, shl at all times hrafter keep indemnified the sd B. & C. & their respive hrs, exs, & ads from all losses, costs, chges, & expses wch they or any of them shl or may incur or sustain by reason of the breach or non-pformce on the pt of the sd D. of any of the terms, provons & agrmts afsd, or by reason of the sd D. not duly pformg, observg, & complying with any award made by any arbitrors, arbitror or umpire appted under the provons for refce contd

Recitals. Agreement for bond. Condition.

(*a*) A suretyship bond for the observance of any other kind of agreement may be readily framed from this.

in the sd articles of ptnp (*b*), so & in such mner that he, the sd A., his hrs, exs, & ads, shl be answerable to the sd B. & C. & their respive exs & ads for such losses, costs, chges & expses in the same mner as if he, the sd A., had been a pty to the sd articles of ptnp, & had been thby constituted a ptner in the sd business in the place of the sd D., & had entd into the agrmts & engagemts thrin contd on the pt of the sd D., & not further or orwise, But so that any alteron wch may be made in the terms of the sd contract of ptnp or, &c., *givg time, &c., not to affect liability of surety*, p. 235, *mutatis mutandis*, Then, &c.

XII.

BOND *by* Contractor *with two* Sureties *for performance of a* Building Contract (*c*).

Jt & sevl bond from A., the contractor, & B. & C., the sureties, to D., the employer, see pp. 228, 229.

Recital of building contract.

Whas the sd A. has by an agrmt in writg, dated, &c., & made betn the sd A. of the one pt, & the sd D. of the other pt, entd into a contract for bldg a house at, &c.: NOW THE

Condition.

CONDON, &c., that if the sd A., his exs or ads, shl duly pform & observe all the stipulons & agrmts contd in the sd contract & on his & their pt to be pformed & observed: And

Alteration of contract, &c., not to release sureties (*d*).

so that any alteron wch may be made by agrmt betn the sd A. & D., his [hrs] exs or ads, in the terms of the sd contract or the nature of the work to be done thrunder, or the givg by the sd D., his [hrs] exs or ads, of any extension of time for

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(*b*) In the absence of special agreement the surety is not bound by a judgment or award against the principal; *Ex parte Young*, 17 Ch. D. 668.

(*c*) See notes to Precedent IV., *ante*.

(*d*) As to what would amount to such an alteration in the position of the sureties, in a case of this kind, as to release them from the contract, see *Mayor, &c., of Hull* v. *Harding*, [1892] 2 Q. B. 494.

pformg the sd contract or any of the stipulons thrin contd & on the pt of the sd A. to be pformed, or any other forgiveness or forbearce on the pt of the sd D., his [hrs] exs or ads, to the sd A., his exs or ads, shl not in any way rele the sd B. & C., or eir of them, or eir of their hrs, exs, or ads, from their or his liability under the above-written bond, THEN, &c.

XIII.

BOND *not to carry on a certain* TRADE *or Business within certain* LIMITS (*a*). VARIATION *where a* SUM *is fixed as* LIQUIDATED DAMAGES *for any default.*

Bond from A. to B., see p. 228.

Recitals of the circes under wch the bond is given: AND WHAS the sd A. has agrd with the sd B. not to set up or

Recitals.

Agreement not to carry on trade.

(*a*) As to agreements in restraint of trade, the following rules appear to be established: (1) The agreement, whether under seal or not, must be for a *bonâ fide* valuable legal consideration, but the sufficiency of the consideration will not now be enquired into (*Hitchcock* v. *Cotter*, 6 Ad. & E. 438; *Collins* v. *Locke*, 4 App. Cas. 686); and it should appear on the face of the deed, though it may be implied (*Gravely* v. *Barnard*, 18 Eq. 518). (2) The restraint must be partial; if unlimited as to both time and place, though limited to a particular business or trade, it will, it appears on the balance of the authorities, be void by virtue of a general rule which is independent of the question of reasonableness (*Davies* v. *Davies*, 36 Ch. D. 359), unless the special nature of the subject matter itself creates a limit, as in the cases of disclosure of a trade secret, and similar cases (*Wallis* v. *Day*, 2 M. & W. 273; *Leather Cloth Co.* v. *Lorsont*, 9 Eq. 345; *Maxim-Nordenfelt, &c., Co.* v. *Nordenfelt*, 9 Times L. R. 150). (3) The restraint must be reasonably necessary for the protection of the covenantee (see per Tindal, C. J., in *Horner* v. *Graves*, 7 Bing. 743; and the judgments in *Rogers* v. *Maddocks*, [1892] 3 Ch. 346); what is reasonable must depend on the nature of the contract, which is usually either one of service, or for the sale of a business, or for dissolution of partnership, and on the general circumstances of the case. The following, however, are the general features of the law upon the subject: (*a*) A restriction such as is usual in contracts of service, confined to a particular business and to a limited area for a limited time, has never been ques-

Agreements in restraint of trade.

carry on the trade or business of —— afsd in the sd town of —— or within —— miles thof, or to solicit the custom

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Limit as to time.

tioned. (*b*) The restraint may be unlimited as to time, *i.e.*, practically for the life of the covenantor, and need not be limited to the life of the covenantee, or to such time as he shall carry on business (*Hitchcock* v. *Cotter, ubi sup.*; *Jacoby* v. *Whitmore*, 32 W. R. 18). A limit of time may, however, be necessary in the absence of any other limit. (*c*) A restriction not to carry on any business at all is void, however limited as to time and place (*Avery* v. *Langford*, Kay, 663; *Vernon* v. *Hallam*, 34 Ch. D. 748; *Baker* v. *Hedgcock*, 39 Ch. D. 520; and see *Perls* v. *Saalfeld*, [1892] 2 Ch. 149, where the covenantee was made the arbiter as to whether the business competed or not). (*d*) A covenant not to solicit customers of the covenantee must be confined to customers existing at the time of the covenant, or during the period of the covenantor's service, and will be void, if extending to all customers at any time (*Baines* v. *Geary*, 35 Ch. D. 154). (*e*) As to limits of space: the smallest space ever held to be unreasonable was that of 100 miles from the covenantee's place of business (*Horner* v. *Graves*, 7 Bing. 735), but it is a matter depending on the circumstances of each case: in a solicitor's business, London and 150 miles round (*Bunn* v. *Guy*, 4 East, 190), in a dentist's business, London (*Mallan* v. *May*, 11 M. & W. 653), and in sales of patented inventions, the whole of Europe, or at least the United Kingdom (*Jones* v. *Lees*, 1 H. & N. 189, 26 L. J. Ex. 9; *Leather Cloth Co.* v. *Lorsont, ubi sup.*) have been held to be reasonable: and there is no absolute rule against a restraint entirely unlimited as to space, if the nature of the trade requires it (*Bryson* v. *Whitehead*, 1 Sim. & Stu. 74: *Rousillon* v. *Rousillon*, 14 Ch. D. 351: *Badische, &c., Fabrik* v. *Schott*, [1892] 3 Ch. 447: *Maxim-Nordenfelt, &c., Co.* v. *Nordenfelt, ubi sup.*, where the subject is discussed at length in the judgments of Lindley and Bowen, LL.JJ.); on the other hand, "in any of the towns or places in England or Scotland in which the covenantees might have been practising" (*Mallan* v. *May, ubi sup.*), and "within 600 miles from London or Westminster" (*Price* v. *Green*, 16 M. & W. 346), are instances of unduly wide limits. (4) The Courts are disposed to put a reasonable construction on a covenant which, taken literally, would be too wide (*Mills* v. *Dunham*, [1891] 1 Ch. 576; *Perls* v. *Saalfeld, ubi sup.*); and (5) Where a covenant is divisible, the part which is good may be upheld, *Mallan* v. *May, ubi sup.*; *Baines* v. *Geary, ubi sup.*; *Baker* v. *Hedgecock, ubi sup.*; *Davies* v. *Davies, ubi sup.*; and per Lord Macnaghten in *Tailby* v. *Official Receiver*, 13 App. Cas., at p. 550; *Rogers* v. *Maddocks, ubi sup.* A covenant not to carry on business "under a particular style or name," is sufficiently limited: *Vernon* v. *Hallam, ubi sup.* The expression, "so far as the law allows," does not validate a covenant otherwise too wide: *Davies* v. *Davies, ubi sup.* As to joint and several interests of two partners in an assistant's bond, see *Palmer* v. *Mallet*, 36 Ch. D. 411. As to the effect upon such a covenant (by an *employé*) of a sale of the business, see *Showell* v. *Winkup*, 60 L. T. 389. As to what constitutes a breach of covenant against carry-

Not to carry on business at all.

Not to solicit customers.

Limit as to space.

Divisibility of covenants

"So far as the law allows."

of any of the customers of the sd B. as hinafter mentd [or orwise to pay to the sd B. £——, as liquidated damages]: BUT so that nothg hrin contd shl prejudice or affect the rt of the sd B., his exs, ads, or assns, to restrain by injon any breach on the pt of the sd A. of the sd agrmt, & to recover damages agst him or his exs or ads for any antecedent breach thof, in lieu of takg pcdgs agst him or them under the above-written bond (*b*): NOW THE CONDON, &c., that if the sd A. shl not at any time hrafter [durg —— yrs from the date of the above-written bond] directly or indirectly, & eir alone or in ptnp with or as agent, clerk or servant of any other pson or psons or orwise howsr set up or carry on the trade or business of ——, or any branch thof, or any trade or business connected thwith, or buy, sell, or orwise deal in any of the articles of the sd trade or business within the sd town of ——, or within —— miles from the [town-hall thof], witht the consent in writg of the sd B., or of the pson or psons for the time being carrying on the trade or business now carried on by the sd B. at —— afsd, being first obtained for that ppose; AND if the sd A. shl not eir by himself or by any other pson or psons, eir on behalf of himself or any other pson or psons, at any time hrafter [durg the sd term of —— yrs], solicit or endeavour to obtain the custom or connon of any of the psons who are now [or may hrafter from time to time while the sd A. shl be in the service of the sd B. be] (*c*), the customers of the sd B. or

Reservation of right to sue for injunction or damages.

Condition.

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ing on a particular business, see *Stuart* v. *Diplock*, 43 Ch. D. 343; *Watts* v. *Smith*, 62 L. T. 453, W. N. 1890, p. 70. As to the above questions generally, see note to *Mitchel* v. *Reynolds*, 1 Sm. L. C. 430; and the tabular statement of decisions in the note to *Avery* v. *Langford*, Kay, 667, continued in Pollock on Contracts, p. 316.

(*b*) As to when an injunction will be granted to restrain an act against which a bond is given, see *Hobson* v. *Trevor*, 2 P. Wms. 191; *Coles* v. *Sims*, 5 De G. M. & G. 1; *Howard* v. *Woodward*, 13 W. R. 132; *Fox* v. *Scard*, 33 Beav. 327; *Palmer* v. *Mallet*, 36 Ch. D. 411; *London, &c. Bank* v. *Pritt*, W. N. 1887, 137, 31 Sol. J. 607; *National, &c., Bank* v. *Marshall*, 40 Ch. D. 112.

Injunction, when granted.

(*c*) See *Baines* v. *Geary*, 35 Ch. D. 154; *ante*, p. 246, note.

of the pson or psons for the time being carrying on his sd trade or business in or in connon with such trade or business: [Or, in the event of the sd A. in any respt failg to observe any of the condons hinbfe expd, then & in such case if the sd A., his exs or ads, shl forthwith pay to the sd B., his exs, ads, or assns, the sd sum of £—— as liquidated & ascertained damages for such default, & not as a penalty, witht any dedon:] Then, &c. (*e*).

Provision for liquidated damages (*d*).

Penalties and liquidated damages.

(*d*) The question whether the sum named is to be taken as a penalty or as liquidated damages turns on the intention of the parties, to be collected from the whole instrument, and the mere use of the term "penalty" or "liquidated damages," is not sufficient by itself to determine the question, *Betts* v. *Burch*, 4 H. & N. 506; see Elph. Interp. Deeds, pp. 428 *et seq.*, where the cases are collected. It has been repeatedly held that, where the same sum is stipulated as recoverable for the breach of every article in the agreement, whether important or unimportant, it will be regarded as a penalty, notwithstanding that the agreement declares not only affirmatively that it shall be taken as liquidated damages, but also negatively that it shall not be taken as a penalty. But the parties may by agreement settle the amount of damages, uncertain in their nature, in respect of the performance or omission of a particular act at such sum as they may agree upon as liquidated damages. See 1 Wms. Saunders, 58 *b*, note (*d*); *Lea* v. *Whitaker*, L. R. 8 C. P. 70; *Magee* v. *Lavell*, L. R. 9 C. P. 107; *Re Newman*, 4 Ch. D. 724; *Law* v. *L. B. of Redditch*, [1892] 1 Q. B. 127. The authorities on this subject were elaborately reviewed by the Court of Appeal in *Wallis* v. *Smith*, 21 Ch. D. 243.

Agreements in restraint of trade; penal clauses.

As to the construction and effect of penal clauses in agreements not to carry on trade, see *Avery* v. *Langford*, Kay, 663; *Leighton* v. *Wales*, 3 M. & W. 545; *Green* v. *Price*, 13 M. & W. 695, *S. C. in error*, 16 M. & W. 346; *Galsworthy* v. *Strutt*, 1 Ex. 659; *Atkyns* v. *Kinnier*, 4 Ex. 776; *Sainter* v. *Ferguson*, 7 C. B. 716; *Mercer* v. *Irving*, El. Bl. & El. 563; *Reynolds* v. *Bridge*, 6 El. & Bl. 528. It is not clear that the clause in the text does not fall within the above rule, so that the sum named would be held to be a penalty only; but it is difficult to frame a clause which would be effectual.

(*e*) A deed of covenant might, in this case, be more convenient.

XIV.

BOND *to* RESIGN *a* LIVING (*a*).

Bond from A. to B., see p. 228.

WHAS the above-named B., as the patron of the vicarage or livg of —— in the coy of ——, wch is now vacant, has agrd & intends forthwith to psnt the above bounden A. thto, upon the condon or understandg that the sd A. shl, at the request of the sd B., or the patron or patrons for the time being of the sd livg, resign & relinquish the same to the intent that the sd B. or such patron or patrons may psnt thto C. or D. (two of the sons of the sd B.), if & when eir of such sons shl be of a sufft age & qualified to hold the same, & that the sd A. shl enter into the above-written bond for the due pformce of the sd engagemt, with such condon for makg void the same as is hinafter contd: NOW THE CONDON, &c., that if the sd A. shl be duly presented, instituted, & inducted to the sd vicarage or livg of ——, & eir of them, the sd C. & D. shl, durg the life of the sd A., attn a sufft age & become qualified to hold the sd vicarage

Recital.

Condition.

(*a*) A general resignation bond, *i.e.*, a bond whereby the obligor binds himself to resign a living at the request of the patron, generally, is void; *Bishop of London* v. *Ffytche*, 2 Br. P. C. 211. A bond to resign in favour of one of two named persons was held void in *Fletcher* v. *Lord Sondes*, 1 Bligh, N. S., 144; but an Act, 7 & 8 Geo. 4, c. 25, was passed giving validity to such bonds executed before 9 Apr. 1827. By 9 Geo. 4, c. 94, a bond to resign in favour of one person or one of two persons named and described therein is rendered valid, if executed before presentation, nomination, collation or appointment of the obligor (s. 1), and if, two persons being named, each is within the degree of relationship therein defined to the patron (s. 2), and provided the bond be deposited in the diocesan registry within two months of its date (s. 4). A presentation is valid under an engagement entered into by such a bond (s. 3). The resignation must state the engagement entered into by a bond of this kind, and the name of the person on whose behalf it is made; and it will be void if the person named be not presented within six months (s. 5). The Act is only applicable to cases of patronage as private property (s. 6).

As to bonds to resign livings.

or livg, & the sd A. shl, within one calr month after reqt in writg in that behalf made to him or left at his usual or last-known place of abode, by & at the costs & chges of the sd B., or the patron or patrons for the time being of the sd vicarage or livg, absolutely resign relinquish & yield up the sd vicarage or livg with all the rights & appurts thof, & all the este & intt of the sd A in the same, & procure such resignon to be duly accepted so that the sd vicarage or livg may within such month become vacant, to the intent that the sd B., or such patron or patrons as afsd, may be enabled to psnt thto such one of them, the sd C. & D., as the sd B. or such patron or patrons as afsd, shl think fit, or in case the sd A. shl not be duly presented, instituted, & inducted to the sd vicarage or livg as afsd, or in case neir of them, the sd C. & D., shl durg the life of the sd A. attn a sufft age & become qualified to hold the same, or in case no such reqt as afsd shl be made to the sd A. by the sd B., or such patron or patrons as afsd, THEN & in any of the sd cases, &c.

XV.

POST-OBIT BOND *with* VARIATION *where a* SURETY *joins.*

Bond from A. to C., or jt & sevl bond from A., ppal, & B., surety, to C., see pp. 228, 229.

Recitals. WHAS the above bounden A. is in expecton of succeedg to a considerable sum of moy or other ppty upon the death of D., of, &c.: AND WHAS the sd A. is now of the age of —— yrs or thrabouts, & the sd D. is of the age of —— or thrabouts & in good health: AND WHAS the sd A. havg occasion for the sum of £—— to supply his immediate wants, has applied to the above-named C. to lend him the same, wch the sd C. has agrd to do upon the sd A. [& the sd B. as his surety] enterg into the above-written obligon,

Expectation.

Ages.

Agreement.

with such condon for makg void the same as is hinafter contd, for securg the repaymt to the sd C. of the sum of £—— in case the sd A. shl survive the sd D., but not orwise: [*or*, And whas the above-named C. has contracted with the above-named A. for the pchase of the sum of £——, to be pd to the sd C. in case the sd A. shl survive the sd D., but not orwise, for the price or sum of £——: And whas upon the treaty for the pchase of the sd contingent sum of £——, it was also agrd that the paymt thof in the event afsd shd be secd by the above-written obligon of the sd A. [& the sd B. as his surety], with such condon for makg void the same as is hinafter contd]: And whas in psuance of the sd agrmt the sd C. has pd the sd sum of £—— to the sd A., as he the sd A. doth hby acknowe: NOW THE CONDON, &c., that if the sd A. shl survive the sd D., & the sd A., his hrs, exs, or ads, [the sd A. & B. or eir of them, or the hrs, exs, or ads of them or eir of them] shl, within —— calr months after the dece of the sd D., pay or cause to be pd to the sd C., his exs, ads, or assns, the sum of £——, witht any dedon, or if the sd A. shl die in the lifetime of the sd D., Then, &c.

Alternative form of agreement.

Payment of money.

Condition.

CONDITIONS OF SALE.

PRELIMINARY NOTE.

The following is a short notice of the recent statutory provisions (which will apply unless excluded by the terms of the contract), and of some of the principal points bearing on conditions and contracts of sale. Other points are dealt with in the notes to the forms.

1. As to title.

1. As to length of title and abstract. By the Vendor and Purchaser Act, 1874, s. 1, 40 was substituted for 60 years as the commencement of title under a contract for the sale of "land" (which by 52 & 53 Vict. c. 63, s. 3, includes "messuages, tenements and hereditaments, houses and buildings of any tenure," and extends therefore to incorporeal as well as corporeal hereditaments), except in those cases in which an earlier title than 60 years might have been required under the previous law; but this exception is qualified by the enactment in the Conv. Act, 1881, s. 3 (3), mentioned in the next paragraph, making a conveyance a good root of title, although made in exercise of a power in a previous instrument. Where the deed with which the title is to commence, though 40 years old, is exceptional in its nature, or might be objected to as unsuitable (*e.g.*, a voluntary deed of gift: see *Re Marsh*, 24 Ch. D. 11), an express stipulation stating its nature should be inserted.

Title prior to commencement.

By the Conv. Act, 1881, s. 3 (3), on a sale of any "property" (real or personal, see s. 2), the purchaser is precluded from going into the title prior to the time stipulated or prescribed by law for the commencement, even though a power exercised by an abstracted instrument was created previously to such commencement. This, though sufficient for ordinary cases, falls short of the usual express condition in the case of a title commencing with a general devise in a will, in not providing that the ownership of the testator shall be assumed (as to which see Dart, V. & P. 338); and it does not bar an objection to the earlier title which the purchaser may discover from collateral sources (see *Nottingham, &c., Co.* v. *Butler*, 15 Q. B. D. 261, 16 Q. B. D. 778; see also *Waddell* v. *Wolfe*, L. R. 9 Q. B. 515; *Re Cox*, [1891] 2 Ch. 109; Dart, 169). In practice, an express provision barring objections in respect of the anterior title is still often inserted, and is desirable except in simple cases. It is to be borne in mind, moreover, that the statutory provision does not

apply where the deed forming the root of title is itself defective on its face for want of parties or of due execution or otherwise; and where a conveyance subject to a mortgage then existing and subsequently paid off is made the root of title, the purchaser (as is conceived) would have the right, unless specially barred or qualified, to have the previous title to the mortgage deduced. See also *infra*, SPECIAL CONDITIONS, as to commencement of title.

Enfranchised copyholds.

By the Conv. Act, 1881, s. 3 (2), on a sale of enfranchised copyhold or customary land, the lord's title cannot be called for. But this does not bar any patent objection to such title; and it does not of course apply to a contract for enfranchisement.

Abstract of title common to several lots.

By the same Act, s. 3 (7), on a sale in lots a purchaser of two or more lots held wholly or partially under a common title cannot require more than one abstract of such title, except at his own expense; so that a condition on that point is unnecessary.

2. Leaseholds.

Title to reversion.

2. As to leaseholds. By the V. & P. Act, 1874, s. 2 (1), a purchaser of leaseholds, whether held by lease or underlease, cannot call for the title to the freehold. By the Conv. Act, 1881, s. 3 (1), the purchaser of an underlease cannot call for the title to the leasehold reversion (but he can of course call for an abstract of the underlease itself and the dealings therewith, *Gosling* v. *Woolf*, [1893] 1 Q. B. 39); and by s. 3 (4, 5), a purchaser of leaseholds is to assume, unless the contrary appears, that the lease, and (in the case of an underlease) that every superior lease was duly granted. These enactments would not bar an objection on account of any defect in the lessor's title which may be patent (such an objection not being covered, as is conceived, by s. 3 (3) of the Conv. Act, 1881), or may be discovered *aliunde*; see above.

As to sub-sub-lease.

In the case of a sub-sub-lease, the provisions requiring the purchaser to assume the validity of the original and every derivative lease may be sufficiently protective, although the clause, s. 3 (1), precluding the purchaser from calling for the title to the leasehold reversion, would seem to apply only to the immediate (and not to the superior) reversion.

Leases for lives.

The above provisions as to leaseholds, both in the Act of 1874 and that of 1881, only apply to terms of years, and not to leases for lives, as to which, therefore, the necessary conditions as to title must be inserted.

Long leaseholds.

The enactment in the Act of 1874 limiting the length of title to 40 years would apply to long leaseholds; but the creation of the term would also have to be shown: see *Frend* v. *Buckley*, L. R. 5 Q. B. 213; Dart, 335.

Contract for lease.

By the Conv. Act, 1882, s. 4, on the sale of a lease granted under a power, a preliminary contract for or relating to the lease is not to form part of the title. In the case of a building lease granted under the power in the Settled Land Act, 1882, the preliminary contract might be very material to the title; see *Re Chawner*, [1892] 2 Ch. 192.

3. Recitals made evidence.

3. As to recitals being evidence. By the V. & P. Act, 1874, s. 2 (2), recitals, statements, and descriptions of facts, matters, and parties in instruments 20 years old are, unless proved to be inaccurate, to be taken as sufficient evidence. In *Bolton* v. *London School Board*, 7 Ch. D. 766, this was held to apply to a recital of the vendor's seisin, so as to deprive the purchaser of the right, which he would otherwise have had, to have

a 40 years' title deduced; a strong decision. The statutory clause is less full than the usual express condition, which extends to matters assumed or implied as well as to actual statements (but see *Re Marsh*, 24 Ch. D. 11, where the Act was held to apply although there was merely an implication); and also (when necessary) makes recitals of documents evidence of their contents and due execution, &c.; and the clause only applies to sales of "hereditaments" (see above). An express condition should be inserted when it is desired to extend it to recitals in deeds less than 20 years old (as often happens); or to making recitals evidence of the contents, &c., of deeds; or on a sale of personalty.

4. Want of covenant for production.

4. As to muniments not in the vendor's possession. The V. & P. Act, 1874, s. 2 (3), debars the purchaser from objecting on account of the want of a legal covenant for production of documents, where he would have an equitable right to their production; but to what cases this applies is not very clear (see Dart, 160); and the clause does not apply to a sale of personalty. See the cases collected, 33 Sol. J. 695, 706.

5. Receipt for rent evidence of performance of covenants.

5. By the Conv. Act, 1881, s. 3 (4, 5), on a sale of leaseholds (which in this case would, it is presumed, include a lease for lives, though it would be better not to rely on this), the receipt for the last rent due under the lease prior to completion is made evidence of the performance of the covenants in the lease, and any superior lease, up to completion, and of the payment of the rent under any superior lease, unless the contrary appears. It is conceived that this clause would not apply where there has been a breach of covenant, so as to bind the purchaser to assume that it has been waived, a case which should in general be provided for; and it does not apply to a peppercorn or other nominal rent, so as to make a receipt for such a rent evidence of the performance of covenants (*Re Moody*, 28 Ch. D. 661); and where on a severance the rent has been apportioned or exclusively charged on other property comprised in the lease, the purchaser should be specially barred from requiring proof of the payment of the rent charged on such other property. As to the relief now afforded against forfeiture for breach of covenant by the Conv. Acts, see *post*, LEASES.

6. Expenses.

6. As to expenses. By the Conv. Act, 1881, s. 3 (6), on a sale of any property, real or personal, the purchaser is to bear the expense of any of the following matters which he may require: (a) the production and inspection of all documents not in the vendor's possession, and incidental journeys; (b) searching for, procuring, and verifying all evidences, &c., not in the vendor's possession; (c) all copies or abstracts of or extracts from documents not in the vendor's possession which are retained by the purchaser on completion; (d) copies of documents of which possession is retained by the vendor. This provision, as far as it goes, is tantamount to and in no respect more stringent than the condition which was previously usual.

On sub-division (a) it has been decided, that it throws on the purchaser the expense of the production of deeds in the custody of the vendor's mortgagee; *Re Willett and Argenti*, 33 S. J. 359, 60 L. T. 735, a decision which certainly alters what was previously the well-recognised practice, and the construction generally put on the usual express condition, which

was substantially the same as the statutory provision; see the discussion in 29 Sol. J. 692, 702; 30 Sol. J. 562.

On sub-division (b), see *Re Moody*, 28 Ch. D. 661. The clause would seem not to cover the expense of obtaining letters of administration to a deceased person, which was often provided for by the express condition, and must still be so if intended.

Vendor's liability under Conv. Act.

On sub-division (c), in *Re Johnson*, 28 Ch. D. 84, on app., 30 Ch. D. 42, it was held on appeal, reversing the decision below, that the clause assumes that a proper abstract deducing the title from the commencement has been already delivered, and does not exonerate the vendor from furnishing such abstract at his own expense, although the deeds may be out of his possession. If the vendor desires to protect himself in this respect he must do so by an express condition.

Documents delivered to purchaser of another lot.

Sub-division (d) of course applies to documents delivered to the purchaser of another lot. It does not (as the old common form of condition did) throw on the purchaser the expense of furnishing him, during the investigation of the title, with copies of documents which are to be handed over to him on completion; but this does not appear very material, and it is not usual to extend the condition in this respect.

As to stamping.

In addition to the expenses provided for by this clause, the old form of condition usually threw on the purchaser the expense of stamping unstamped and insufficiently stamped documents, and of registering unregistered documents. As to stamping, it is not clear (having regard to *Abbott* v. *Stratten*, 3 J. & L. 603) that this condition was valid; now, however, by the Customs and Inland Revenue Act, 1888 (51 Vict., c. 8, s. 20), such a condition is expressly invalidated as to documents dated after the passing of the Act (16th May, 1888). In future, therefore, it can only have a limited operation.

Except as above mentioned, the statutory clause as to expenses is sufficiently comprehensive, and is now commonly relied upon in practice.

7. Covenants for title, &c.

7. As to the vendor's covenants for title, or, in the case of trustees or mortgagees, against incumbrances, and as to the implication of such covenants under the Conv. Act, 1881, s. 7, by the use of the statutory language, see CONVEYANCES ON SALE.

8. Muniments to be retained by vendor.

8. As to the muniments to be retained by the vendor. By the V. & P. Act, 1874, s. 2 (5), where the vendor retains any part of an "estate" to which any documents of title relate, he is entitled to retain them; but this does not apply to documents relating to property other than an "estate," *e.g.*, a settlement relating to personalty; and as the right of the purchaser to a covenant for production of the muniments retained is left to implication, an express provision should be inserted where any muniments are retained. As to the law, apart from statute, as to the right to the possession of the deeds, see 33 Sol. J. 671.

Expense of covenants for production.

By the same Act, s. 2 (4), the expense of covenants for production required by the purchaser (other than of the perusal on behalf of and execution by the vendor or covenantor), is to be borne by the purchaser.

As to covenants for production.

As to covenants for production, &c., of muniments retained by the vendor, and as to the adoption in practice of the statutory form of acknowledgment of the right to production and undertaking for safe

custody in lieu of the old form of covenant by virtue of the Conv. Act, 1881, s. 9; and as to trustees and mortgagees giving the acknowledgment only without the undertaking, see CONVEYANCES ON SALE.

General effect of statutory provisions.

The above-mentioned statutory provisions are principally of value for the protection of vendors selling under open contracts, but they may be and are in practice to a great extent relied on in ordinary conditions and contracts of sale; except that, so far as they depend on the V. & P. Act, 1874, they do not apply to sales of personalty.

As to contract to grant an easement.

Although it has been questioned whether an easement is a hereditament (Hood & Challis, Conv. Acts, 189; Goodeve, R. P., p. 13, note; 34 Sol. J., 689), it has been decided that a contract to grant an easement is within the V. & P. Act, 1874, s. 2 (*Jones* v. *Watts*, 43 Ch. D. 574); it would equally (if amounting to a contract for sale) be within the Conv. Act, 1881, s. 3.

Sales by tenants for life.

The case of a tenant for life selling under the powers of the Settled Land Act, 1882, does not generally necessitate any special condition, unless it be a provision regulating the covenants of the vendor or his trustees as to title and production of muniments.

Sales by trustees.

As to the powers of trustees for sale to sell by auction or private contract and subject to any conditions as to title, &c., see 23 & 24 Vict. c. 145, ss. 1 and 2, which (though now repealed by the Settled Land Act, 1882, s. 64) remain in force as to trusts created between the 28th August, 1860, and the 1st January, 1883, but apply to "land" (as to which see p. 252) only; see also the Conv. Act, 1881, s. 35, applying to trusts under instruments coming into operation since the 31st December, 1881, and to any kind of property, real or personal. Neither of these enactments applies to executors.

As to depreciatory conditions,

It has been held that the employment of unnecessarily depreciatory conditions on a sale by trustees is a breach of trust which vitiates the contract, and entitles the purchaser to repudiate it (*Dance* v. *Goldingham*, 8 Ch. 902; *Dunn* v. *Flood*, 25 Ch. D. 629; 28 Ch. D. 586); but this doctrine (which was productive of great inconvenience in practice, without any compensating advantage to the beneficiaries) has been modified in a very beneficial manner by the Trustee Act, 1888, 51 & 52 Vict., c. 59, s. 3, enacting that a sale under such circumstances by trustees (which includes executors and administrators, and extends to constructive and implied trusts: see s. 1) shall not be impeachable by any *cestui que trust* unless it appears that the consideration was thereby rendered inadequate; and shall not be impeached after the conveyance against the purchaser, except in case of collusion; and that a purchaser shall not be at liberty to object to the title on this ground. This puts the law on a satisfactory footing, but the reckless insertion of needlessly stringent conditions, such as appear to be in common use in some quarters, should be avoided.

on sales by tenants for life.

The doctrine in *Dunn* v. *Flood* applied, it is presumed, to tenants for life selling under the Settled Land Act, 1882 (see s. 53), and the late Act also (it is conceived), applies to them, though this might have been more clearly expressed.

As to the power of trustees to join with co-owners or owners of other property in selling, see *Re Cooper*, 4 Ch. D. 802, and the cases there cited,

and the Conv. Act, 1881, s. 35. It is doubtful, in the absence of judicial decision, whether the Trustee Act, 1888, s. 3, permits trustees to concur in selling with owners of adjacent property which is subject to depreciatory conditions. Probably it would be held that the *onus* lies on the trustees of showing that a higher price has been thereby obtained.

Protection of trustees and solicitors adopting statutory provisions.

See also the important provisions in the V. & P. Act, 1874, s. 3, protecting trustees who sell or buy without excluding the application of that Act; and in the Conv. Act, 1881, s. 66, protecting solicitors and trustees and executors who adopt the provisions of that Act, or omit to negative or exclude them, so that such adoption or omission will not be a breach of trust or duty, or involve them in liability.

As to married women trustees.

In the case of a married woman trustee, it should be borne in mind that under the old law she could not enter into a valid contract for sale except by deed acknowledged with the concurrence of her husband (*Avery* v. *Griffin*, 6 Eq. 606), and that it is by no means clear that her disability is removed by the Married Women's Property Act, 1882, as the power to enter into contracts given by the Act only enables her to bind her separate estate generally, and it is not clear that the powers of disposition under the Act apply to trust estates; and her power to give receipts for purchase-money is also questionable. It would seem also that she could not in general convey to the purchaser except with the old formalities, although on a sale by the Court she was held to be a bare trustee under the V. & P. Act, 1874, s. 6 (*Re Docwra*, 29 Ch. D. 693).

As to misleading conditions.

In drafting special conditions it should be remembered that a condition must not be misleading (see Dart, 170); but a condition requiring the purchaser to assume facts which the vendor believes to be true, although entirely unsupported by evidence, is not of this nature, and it is unnecessary to state the specific defect which the condition is intended to cover; see *Re Sandbach*, [1891] 1 Ch. 99.

See further as to the law and practice on the subject of conditions and contracts of sale, Dart, chaps. iv.—vii., pp. 122 *et seq.*; 1 Dav. Prec. pp. 415 *et seq.*

In some places it is the very objectionable practice not to print the conditions of sale for circulation, but merely to read them out in the auction room; see *Torrance* v. *Bolton*, 8 Ch. 118, for an instance of the mischief arising from this.

I.

GENERAL CONDITIONS *on* SALE *by* AUCTION *of* FREEHOLDS *or* COPYHOLDS *or both.* VARIATIONS *for a Sale in* LOTS, *and adapted to different circumstances.*

Biddings

1. THE highest bidder [for each lot] shl be the pchaser, & if any dispute arise as to any biddg, the ppty [lot] shl be put up again at a former biddg. There will be a reserve

price [for each lot], & the vendors or their agents shl be at liberty to bid [up to the reserve]. The amt of each biddg shl be regulated by the auctioneer, & no biddg shl be retracted (*a*).

2. *Valuons of timber, fixtures, &c., if required, see* SPECIAL CONDONS, p. 273.

Deposit and completion.

3. THE [Each] pchaser shl immedly after the sale pay into the hands of the auctioneer (*b*) a deposit of £—— per cent. on his pchase-moy, & sign a memdum of contract in the form subjoined, & shl pay the residue of the pchase-moy

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As to reserve price, division of lots, &c.

(*a*) As to the necessity for stating whether the sale is subject to a reserve price, see the Sale of Land by Auction Act, 1867, 30 & 31 Vict. c. 48; Dart, V. & P. 126; and as to reserving liberty to bid up to that price, see *Gilliat* v. *Gilliat*, 9 Eq. 60. The words "up to the reserve" are usually omitted, and there seems no reason for inserting them. The following is another form of part of this condition:

Variation.

"The vendors reserve the right—*a*. To bid by themselves or an agent, & to refuse any bid; *b*. To alter the order of the lots, & to put up any lot or lots septely or togr in any combinon; *c*. To withdraw any lot from sale at any time bfe it has been knocked down witht declarg the reserve price."

As to deposit

(*b*) The deposit, according to the well-settled rule, is held by the auctioneer as stakeholder for both parties; *Harington* v. *Hoggart*, 1 B. & Ad. 577; Dart, 205. The conditions sometimes, especially in the provinces, provide that it shall be paid to the vendor's solicitor or some other person authorised by him to receive it; in which case he will hold it as agent for the vendor and not as stakeholder, unless the latter is expressed (as is sometimes done); *Edgell* v. *Day*, L. R. 1 C. P. 80; in that case substitute for, "the auctioneer," "the vendors' solor [as stakeholder for both pties]." Fiduciary vendors may sell on the same terms as an ordinary vendor in this respect, and on a sale by a tenant for life under the Settled Land Act, 1882, there can be no objection to the deposit being paid to him or to the auctioneer, or any other person authorised to receive it, whether as stakeholder or not. Of course on completion it must be paid over to the trustees or other proper parties, whose acknowledgment for the payment of the whole purchase-money will be taken in the usual way. In the case of a company in liquidation the purchase-money and deposit may be made payable to "the liquidator of the vendors' Co." In the provinces it is very common for the vendors to exact from the purchaser a fee to the auctioneer and also one for the contract.

[togr with the amt of the afsd valuon] to the vendors, or as they shl direct, on the —— day of —— next, at the office of the vendors' solors, Messrs. ——, at ——, at wch time & place the pchase shl be completed (*c*).

Possession and interest.

4 (A). THE rents & profits or posson will be reced or retained & the outgoings dischged by the vendors up to the —— day of —— next, as from wch day all outgoings [*add where the ppty is in hand or the rates are not pd by the tenants*, includg any rates made but not demanded till after that day] (*d*) shl be dischged by & the rents & profits or posson shl belong to the pchaser, & the rents, profits & outgoings shl if necy be apportioned for the ppose of this provon; but the pchaser shl not be let into the actual posson or rect of the rents & profits until the complon of the pchase, & the pchaser shl on complon pay to the vendors any arrears of rent & their proportion of the current rents, less their proportion of current outgoings. If from any cause whatever other than the wilful default of the vendors, the pchase [of any lot] shl not be completed on or bfe the —— day of —— next, the pchaser shl pay to the vendors intt (*e*) on the balce of the pchase-moy [& the amt of the afsd valuon], at

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(*c*) That time is not of the essence of this contract, see *Hatten* v. *Russell*, 38 Ch. D. 334.

Improvement rates.

(*d*) As to improvement rates, &c., see *Midgley* v. *Coppock*, 4 Ex. D. 309; *Re Furtado*, 27 Sol. J. 466; *Re Betteswortli*, 37 Ch. D. 535; *Re Boor*, 40 Ch. D. 572; *Hornsey Local Board* v. *Monarch, &c., Soc.*, 23 Q. B. D. 149; 24 Q. B. D. 1. As to the recovery of expenses of this nature under the Public Health Act, 1875, see *R.* v. *Swindon, &c., Local Board*, 4 Q. B. D. 305. In the case of town properties, especially in new districts, it is sometimes desirable to insert an express condition as to this, see 22 Sol. J., 626, and form *infra*, p. 296. As to the right of the purchaser to rents without apportionment, see *Re Dawson*, 21 L. R. (Ir.) 441.

As to interest on purchase-money.

(*e*) As to the payment of interest see Dart, V. & P. 708 *et seq.* It has been supposed on the authority of some recent cases (*Re Monckton*, 27 Ch. D. 555; *Re Golds*, 33 W. R. 333) that it is competent to the purchaser, although the vendor has not been guilty of wilful default, to escape from the condition by setting apart and depositing the unpaid purchase-money in a bank at interest, so as to restrict the vendor to the interest allowed on the deposit (see the discussion in Dart, 716, *et seq.*); but this doctrine has been repudiated, and the matter replaced on a more intelligible footing in *Re Riley*, 34 Ch. D. 386.

the rate of —— p.c. p.a. from that day until the complon of the pchase (*a*), & shl not be entled to any compenson for the vendors' delay or orwise (*b*), but this stipulon is witht prejudice to the vendors' rts under any other of these condons.

The same. Shorter form.

4 (B). THE [Each] pchaser shl on the complon of the pchase be let into posson or rect of the rents as from the sd —— day of —— next, up to wch day all outgoings will be dischged by the vendors; the rents & outgoings being, if necy, apportioned for this ppose. *Add condon as to intt as in last form.*

[*Provon as to insurces, & as to ppty being at the risk of the pchaser, if pper, see* pp. 295, 296.]

Outgoings, easements, tenancies, &c.

5. THE ppty is sold (*c*) subjt to all chief quit & other rents & outgoings & to all [manorial rts &] incidents of tenure, rts of way, water, lights, drainage & other easemts, if any, affectg the same [& all rts of adjacent owners (*d*) & to any liability to repair or contribute to the repair of roads, ways, passages, bridges, sea-walls, dykes, sewers, drains, gutters, fences, & other like mres], & subjt also to the existg tenancies & all allowces to & claims for com-

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Option to vendors to take rents in lieu of interest.

(*a*) The following is sometimes added here:—"Or the vendors shl have the option of takg the rents & profits (less outgoings) up to the actual day of complon in lieu of intt as afsd."

Compensation for vendor's delay, &c.

(*b*) As to the purchaser's right to compensation for the vendor's delay, or for the deterioration of the property, or any other loss through his default, see 16 Sol. J. 394; *Royal, &c., Society* v. *Bomash*, 35 Ch. D. 390; *Rowe* v. *School Board for London*, 36 Ch. D. 619; Dart, 284, 783, 1083, note. It may be proper in some cases to protect the vendor in this respect by a more express condition.

(*c*) The words "and will be conveyed" are sometimes inserted here, which would entitle the vendor to have the conveyance made expressly so subject (*Gale* v. *Squier*, 25 W. R. 226). This, however, could rarely be necessary for the vendor's protection, and, as it is calculated to hamper the purchaser's title, is scarcely fair to him.

(*d*) Occasionally in town properties this may be made fuller by saying "owners of adjacent, superjacent, or subjacent ppty in respt of pty or other walls, fences, arches, archways, vaults, cellars, rights of support or any other mres."

penson & other rts of the tenants (*e*). The counterpts or copies of the leases or written agrmts (if any) with the tenants will be produced at the sale, & may be inspected at the office of the vendors' solor at any time prevsly, & the pchaser [respive pchasers] (whether availg himself [themselves] of such opportunity of inspection or not) shl be deemed to have full notice of the contents thof (notwg any partial or incomplete statemt of such contents or of the terms of the tenancies in the parlars, or these condons, or any inaccuracy in any such statemt) (*f*) [& of the state of the ppty, as to repairs, insurce, pty walls, & all other mres]. [In any case in wch the vendors have no counterpt of the lease or agreemt of tenancy, or there is no written agrmt, the pchaser shl be satisfied with such evidce of the terms of the tenancy as the vendors may be able to adduce] (*g*).

(*e*) Add if necessary, "& the pchaser shl not require any rents or outgoings to be apportioned or call for any evidce not in the vendors' posson as to the origin or creation of any such outgoings easemts or rights as afsd."

(*f*) See *Cox* v. *Coventon*, 31 Beav. 378.

(*g*) If the property is subject to any easements or restrictions prejudicially affecting its value, the existence of which is known, the general condition should not be relied on, but their nature should be stated in the particulars (see *Heywood* v. *Mallalieu*, 25 Ch. D. 357; *Nottingham, &c., Co.* v. *Butler*, 15 Q. B. D. 261; 16 Q. B. D. 778; *Hardman* v. *Child*, 28 Ch. D. 712; Dart, V. & P. 176; *Re Davis*, 40 Ch. D. 601; *Re Ebsworth*, 42 Ch. D. 23) even though their origin was anterior to the root of title (see *Re Cox*, [1891] 2 Ch. 109). And the insertion of general words implying the possible existence of restrictive covenants or other matters of serious importance where none such are known to exist should of course be avoided, especially on a sale by trustees (notwithstanding the Trustee Act, 1888, s. 3); see *Dunn* v. *Flood*, 25 Ch. D. 629, 28 Ch. D. 586.

Easements and restrictions should be stated.

Occasionally the sale is subject to a mortgage (so as to be a sale of the equity of redemption) or to a rentcharge. In that case add, "& to a mtge for £—— & intt at —— p.c. p.a., payable half yrly, *or*, 'to an anny or rentchge of £—— p.a. chrged thron & payable durg the life of X.,' wch sd ppal sum & the intt thron from the —— day of ——, *or*, 'wch sd anny from the —— day of ——,' shl be pd by the pchaser, & the vendors shl be indemnified thfrom by the pchaser's covt, to be contd in the convce, a

Sale subject to mortgage or annuity.

6. *Condons as to commcemt & evidce of title, abstract, &c., see* SPECIAL CONDONS.

Recitals evidence (*a*).

7. EVERY deed & documt dated —— yrs or upwards prior to the day of sale [& every pchase or mtge deed of whatever date] shl be conclusive evidce of everythg recited, stated, noticed, assumed or implied thrin [& of the contents & due exon of every deed or other documt recited, stated, or noticed thrin, & of wch neir the origl, nor an attested copy, nor a covt for prodon, is in the vendors' posson, & also that such recited, stated, or noticed deed or documt contd no other mre material to the title.]

Identity (*b*).

8 (A). THE [Each] pchaser shl [notwg any discrepancies or varions in names, quantities, measuremts, boundaries, abuttals, contour or orwise] admit the identity of the ppty [lot] pchased [by him] with that comprd in the munimts upon the evidce afforded by a comparison of the descriptions in the parlars & munimts & plans thto (if any) [& a statutory declon to be made, if required, at the pchaser's expse, that the ppty [such lot] has been enjoyed, accdg to the title shown, for [20] yrs or upwards prior to the day of sale [or from the date from wch the title thto is to be deduced accdg to these condons if more recent.]]

The same. Another form (*b*).

8 (B). THE vendors shl not be required to furnish any evidce of the identity of the psnt with any former description of the ppty [any lot] beyond what may be afforded by

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duplicate whof shl be prepared & extd by the pchaser at his expse." The expedient of selling subject to an annuity may be had recourse to where it cannot be released except by means of the Conv. Act, 1881, s. 5, or the Settled Land Act, 1882, s. 5.

As to freeing land sold from incumbrances, see the Conv. Act, 1881, s. 5; and as to settled estates the Settled Land Act, 1882, ss. 5, 24 (4, 5, 6).

As to recitals being evidence.

(*a*) This condition may in general be omitted in reliance on the statutory provision, unless it is extended to documents less than twenty years old, or the last part in brackets is required; see p. 253. It should not without reason be extended to recent documents; and sometimes, especially where a document is of an *ex parte* nature (such as a disentailing deed, or a deed enlarging a long term), its nature ought to be stated.

(*b*) See other forms in SPECIAL CONDITIONS.

the munimts themselves, nor to reconcile differg descriptions [nor to distinguish the freehd from the copyhd pt of the ppty, nor the pts held under different titles].

[9. The expse of obtaing, attemptg to obtain, furnishg, abstractg, makg, verifyg, producg, inspectg, & examing all deeds, documts, statutory declons, certfes, evidce, & informon whatsr, not in the vendors' posson, & all copies of or extracts from deeds, wills, or other documts, whether in their posson or not, for whatever ppose the same resply shl be required, & of all searches, enquiries, & journeys for any of the above pposes shl be borne by the pchaser.] Expenses (c).

[10. No objon or requon shl be made on acct of the non-registron in the coy register of any deed, will, or other doct.] Registration (d).

11. The expse attendg the stampg of any unstamped or insufftly stamped docts [dated prior to the Customs & Inland Revenue Act, 1888] (if any such there be) shl be borne by the pchaser. Stamping (e).

12. On paymt of the balce of the pchase-moy the [each] pchaser shl be entled to a pper assurce of the ppty [lot or lots pchased by him] from the vendors & all other necy pties, if any, such assurce [& every other instrumt & act wch shl be required by the [any] pchaser for gettg in or releasg any outstandg este, rt, or intt, or for completg the vendors' title, or for any other ppose (*f*)] to be prepared, made, & done by & at the expse of the pchaser [who shl also bear the expse of the perusal on behalf of & exon & acknowemt by all pties other than the vendors [& their Conveyance.

(*c*) This condition may, and now is in practice usually omitted in reliance on the statutory provision (see p. 254). As to expenses.

(*d*) As to registration it seems better to bar the right to require it (as it may not admit of being done), than merely to throw the expense on the purchaser; see *Girling* v. *Girling*, W. N. 1886, 18; 30 Sol. J. 238. As to registration.

(*e*) As to stamping, see p. 255; the words in brackets referring to the Act of 1888, are usually inserted.

(*f*) See as to this, Dart, 176, 799; in a simple case the words in these two brackets may be omitted. The words in the subsequent bracket limiting a time for leaving the conveyance for execution are usually inserted, but are practically of little, if any, use.

mtgees] of every such assurce & instrumt] [& the engrossmt of every such assurce & instrumt shl be left not less than 10 days bfe the sd —— day of —— at the office afsd, for execon by the vendors & other conveyg pties, if any].

As to covenants. Trustees, &c.

13. The vendors being trees, *or*, "exors," *or*, "mtgees sellg under a power," *or as the case may be*, shl not be required to enter into any covt except the usual express or implied statutory covt that they resply have not incumbered, [& the acknowemt as to munimts mentd in the ——condon], & the concurrce of the psons beneficially interested [except any pson whose consent is necy to the sale], *or*, "of the mtgor," in the assurce of the ppty [any lot] (*a*) shl not be required.

Consenting party.

[Any pson joing in the conveyce as a necy consentg pty shl not be required to enter into any covt except that he has not done anythg to prevent his so consentg.]

Tenant for life. Settled Land Act.

[As the vendor is sellg as tenant for life, *or*, "limd owner," under the powers of the Settled Land Act, 1882 (*b*), his covts for title

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As to trustees covenants for title.

(*a*) The above exclusion of the liability of trustees, mortgagees, and other fiduciary vendors to enter into any covenants for title, except against their own incumbrances, as it expresses only what is the perfectly settled rule where the character in which they are selling is stated (see Dart, 146, 622), may be omitted, but it is very common to insert it. It is also, speaking generally, equally clear that on a sale by executors, or by trustees or mortgagees selling under a power, the concurrence of the beneficiaries or mortgagor cannot be required; but as in exceptional cases it may be otherwise (see Dart, 617), it is desirable to provide for this expressly; as should also be done where a tenant for life or other person joins to consent (see *Earl Poulett* v. *Hood*, 5 Eq. 115; *Re Sawyer*, 33 W. R. 26), either by providing (as above) that he shall only be required to covenant that he has not done anything to prejudice his power of consenting, or (in the case of a tenant for life) by restricting his covenants for title as if he were the vendor, as in the next variation, or by excluding altogether his liability to covenant. As to the covenants for title on a sale by husband and wife, see Dart, 620, and on a sale by joint tenants, *ib.* 624. As to acknowledgments for production of muniments, and as to trustees giving the undertaking for safe custody, see Conveyances on Sale.

Concurrence of beneficiaries.

Covenants by tenant for life consenting.

Notices under Settled Land Acts.

(*b*) On a sale by a tenant for life or other limited owner under the Settled Land Acts, it should be seen that the proper statutory notices of the intended sale are given to the trustees and their solicitors at least a month previously, under s. 45 of the Act of 1882; or else that the

& further assurce, whether expd or implied, shl as regards the reversion or remr expectant on his [life] este in the ppty be qualified so as to extend only to the acts of himself & psons claimg under him (*c*)].

14. *Custody of title deeds & acknmt & undertakg as to prodon, &c., if required, see* SPECIAL CONDONS, p. 327 *et seq.*

[15. *Apportionmt of rents, &c., if necy, see* SPECIAL CONDONS, p. 306.]

Requisitions.

16. WITHIN, *fourteen*, days after the delivery of the abstract (*d*) the [each] pchaser shl furnish to the solor of the vendors a statemt in writg of his requons & objons arisg on the abstract, parlars, & condons [& within, *seven*, days after the delivery of the vendors' replies to the pchaser's requons & objons (if any), the pchaser shl furnish to the solor of the vendors a statemt in writg of his further requons or objons (if any) arisg on such replies] (*e*); & every requon or objon not so stated shl be considered as waived, & for the ppose of any objon or requon an abstract shl be deemed perfect if it supply the informon suggestg the same although orwise defective (*f*); & if no requon or objon is so stated, the title shl be considered as accepted (*g*); & in these respts time shl be deemed of the essce of the contract; & if the [any] pchaser shl make & insist on any objon or requon, eir

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notices are waived under the Act of 1881, s. 5; and that trustees for the purposes of the Acts are properly constituted to receive or waive the notices; see as to this, and generally, the note on the Act *infra*, CONVEYANCES ON SALE.

Covenants of tenant for life.

(*c*) This qualification of the covenants of a tenant for life is now sanctioned by general practice (see Dart, 619), and would probably be held proper under an open contract.

Delivery of abstract.

(*d*) The conditions sometimes limit a time for delivery of the abstract; but there seems no object in this, though it may be stipulated for on a sale by private contract. As to the right of the purchaser to rescind on non-delivery of an abstract within a reasonable time, see *Compton* v. *Bagley*, [1892] 1 Ch. 313.

(*e*) The addition in brackets is sometimes inserted, and may be useful to prevent delay.

(*f*) See as to this, Dart, V. & P. 184.

(*g*) See *Want* v. *Stallibrass*, L. R. 8 Ex. 175; *Re Tanqueray-Willaume & Landau*, 20 Ch. D. 465.

as to title, convce, or any mre appearg on the parlars (*a*), condons or abstract or orwise, wch the vendors shl be unable or [on the ground of difficulty, delay, or expse, or on any other reasble ground] (*b*) unwillg to remove or comply with, the vendors shl, notwg any prevs negotion or litigon (*c*), be at liberty on givg to the pchaser not less than ten days' notice in writg to annul the sale, in wch case, unless the objon or requon shl have been in the meantime withdrawn, the sale shl, at the expiron of the notice, be annulled, the pchaser

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(*a*) As to these words, see *Re Terry*, 32 Ch. D. 14. A defect of title would be within this recission clause, although falling within the clause giving the purchaser a right to compensation: *Ashburner* v. *Sewell*, [1891] 3 Ch. 405.

As to rescission clause.

(*b*) The rescission clause is now practically universal on sales by auction, and is very commonly insisted on by vendors on sales by private contract; but its proper form is somewhat doubtful. Notwithstanding what was said in *Hardman* v. *Child*, 28 Ch. D. 712, it is the practice to extend it to requisitions as to conveyance as well as title. Without the above qualification in brackets it gives a power which may be used by an unscrupulous vendor in an unfair and unreasonable manner, and even as a means of escaping from the contract in order to accept a better offer (see 22 Sol. J. 626); on the other hand, the words in brackets may expose the vendor to a controversy. It has been held that a vendor with no title, or a radically bad one, cannot avail himself of such a condition (*Nelthorpe* v. *Holgate*, 1 Coll. 203; *Bowman* v. *Hyland*, 8 Ch. D. 588); but the present tendency seems to be to restrict this to cases where the defect was known to the vendor at the time of the sale, and is such that the attempt to sell under such a condition is dishonest (see *Heppenstall* v. *Hose*, 33 W. R. 30). A serious defect of title should of course be the subject of a special condition. If the right to rescind is reserved, in case the purchaser makes and insists on the requisition, the vendor cannot rescind without first answering it (*Turpin* v. *Chambers*, 29 Beav. 104; *Duddell* v. *Simpson*, 2 Ch. 102); but where the words "and insist on" are absent, the vendor may rescind summarily on the making of the requisition; see *Re Glenton*, 53 L. T. 434; *Re* 163*rd Starr Bowkett, &c.*, 42 Ch. D. 375, and remarks thereon, 33 Sol. J. 434; *Woolcott* v. *Peggie*, 15 App. Ca. 42. The condition should give the purchaser, as above, a reasonable opportunity of withdrawing the requisition (see *Re Dames*, 27 Ch. D. 172; 29 Ch. D. 626; Dart, 183).

(*c*) In *Re Arbib*, [1891] 1 Ch. 601, it was held that after an objection taken by the purchaser had been decided by the Court in his favour, it was too late for the vendors to rescind under a clause in the above form, so as to escape payment of the purchaser's costs. It does not seem desirable to extend the clause to meet such a case.

being in that event entled to a return of the deposit, but witht intt, costs, or compenson (*d*).

17 (A). If any error, misstatemt, or omission shd be discovered in the parlars [or plan], the same shl not annul the sale, but a reasble abatemt or compenson in respt thof [except as to the quantities, wch are believed, & shl be taken to be correct], shl be allowed or pd by the vendors or pchaser, as the case may be, regard being had to the amt of the pchase-moy, provd the same shl be demanded in writg, prior to [the time hby fixed for] complon of the pchase [for wch ppose time shl be deemed to be of the essce of the contract] (*f*), the amt to be fixed by the auctioneer, *or*, "by two referees, one to be appted by each

Compensation for misdescription (*e*).

(*d*) If there is no deposit, say "& the vendor shall not be liable to pay to the pchaser any costs or compenson." The following is sometimes added, "& thrupon the contract & abstract & all docts delivered by either pty to the other shall be returned."

Variation where no deposit.

(*e*) As to this condition see Dart, V. & P. 150 *et seq.* It has been said (Dart, p. 158), on the authority of *White* v. *Cuddon*, 8 Cl. & Fin. 766, that trustees are not justified in allowing compensation for their own errors; but that case hardly supports the proposition in so broad a form, and the judgments in *Dunn* v. *Flood*, 28 Ch. D. 591 *et seq.*, seem to show that it may in some cases even be necessary to insert it; the general practice is believed to be to insert such a condition without regard to the question whether the vendors are trustees or not, and there seems no reason against using it if convenient. The point is not affected by the Trustee Act, 1888, s. 3, as that applies only to depreciatory conditions, which this is not (*Hobson* v. *Bell*, 2 Beav. 17). There is, of course, no objection, especially since the Act just mentioned, to the use of the condition 17 (c) excluding compensation, which is now more usual. For another form of condition as to compensation, see p. 309. As to what misdescriptions are covered by such a condition see *Re Terry*, 32 Ch. D. 14; *Re Fawcett*, 42 Ch. D. 150; *Re Aspinalls*, 60 L. T. 595. As to the measure of compensation, see *Re Chifferiel*, 40 Ch. D. 45. As to the position of a mortgagee vendor who allows compensation for an error of description, see *Tomlin* v. *Luce*, 41 Ch. D. 573, reversed 43 Ch. D. 191.

As to compensation for errors where vendors trustees.

(*f*) It is now settled, after some conflict of authority, that in the absence of these words the purchaser could obtain compensation after completion; Dart, 904; *Palmer* v. *Johnson*, 13 Q. B. D. 351; and see *Clayton* v. *Leech*, 41 Ch. D. 103.

pty, or their umpire, psuant to the Arbitron Act, 1889," whose decision shl be final.

The same. Short form. 17 (B). If any error or omission shl be found in the parlars, the same shl not annul the sale, but a reasble compenson (if demanded in writg bfe complon) shl be allowed or pd by the vendors or pchaser, as the case may be, to be settled by two referees, or their umpire, in the usual way.

The same, excluding the right to compensation (*a*). 17 (C). The ppty is believed, & shl be taken to be correctly described as to quantity & orwise; & any error, misstatemt, or omission in the parlars [or plan] shl not annul the sale, or be a ground for any abatemt or compenson on eir side.

Non-compliance with conditions (*b*) 18. If the [any] pchaser fail to comply with any of these condons, his deposit shl be absolutely forfeited, & the vendors shl be at liberty (witht being obliged to tender a convce) to resell the ppty [lot or lots sold to him], eir by public auction or private contract; & the deficiency (if any) arisg on such resale, & all expses attendg the same or any attempted resale, shl be made good & pd by the pchaser at the psnt sale as liquidated damages; & any increase of price on such resale shl belong to the vendors.

Memorandum.

Memorandum to be ap- It is hby agrd betn Messrs. ——, as agents for A. & B. (*c*), the vendors, & —— of ——, that at the sale by

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(*a*) See as to this, Dart, 731 *et seq.*; *Re Terry*, 32 Ch. D. 14; *Re Beyfus*, 39 Ch. D. 110.

(*b*) See *Essex* v. *Daniell*, L. R. 10 C. P. 538; *Howe* v. *Smith*, 27 Ch. D. 89; *Soper* v. *Arnold*, 35 Ch. D. 384; 37 Ch. D. 96; 14 App. Ca. 429.

Requirements of the Statute of Frauds. (*c*) That the names of the vendors, or such a description as will sufficiently identify them, must appear on the contract, to satisfy the Statute of Frauds, see *Potter* v. *Duffield*, 18 Eq. 4, and the cases there cited. See also *Sale* v. *Lambert*, 18 Eq. 1; *Commins* v. *Scott*, 20 Eq. 11; *Beer* v. *London and Paris Hotel Company, Limited*, 20 Eq. 412; *Thomas* v. *Brown*, 1 Q. B. D. 714; *Rossiter* v. *Miller*, 5 Ch. D. 648; 3 App. Ca. 1124; *Catling* v. *King*, 5 Ch. D. 660; *Williams* v. *Jordan*, 6 Ch. D. 517; *Jarrett* v. *Hunter*, 34 Ch. D. 182; *Butcher* v. *Nash*, 61 L. T. 72. As to what is a sufficient reference to a plan, see *Nene Valley Drainage Commissioners* v. *Dunkley*, 4 Ch. D. 1.

That a vendor who is unable to make a title cannot compel a purchaser

auction this —— day of —— of the ppty descd in these parlars the sd —— was the highest bidder for & has become the pchaser of the ppty [lot ——] described in these parlars for the sum of £——, & that he has pd to the sd Messrs. —— the sum of £—— as a deposit & in pt paymt of the pchase-moy, & that these parlars & condons shl be taken as the terms of agrmt for the sd sale & pchase: As WITS our hands this —— day of ——, 18—. pended to conditions (*d*).

Pchase-moy, £——
Deposit pd, ——
Balce, ——
Abstract to be sent to ——

II.

GENERAL CONDITIONS *on* SALE *by* AUCTION *of* LEASEHOLDS. VARIATIONS *for a Sale in* LOTS, *and adapted to different circumstances* (*e*).

1. *As to biddgs, &c.*, p. 257.
2. *Valuon of fixtures, &c. See* SPECIAL CONDONS, I.
3. *Deposit & complon*, p. 258.
4. *Posson & intt*, p. 259.
5. THE ppty [each lot] is sold subjt to the rents, covts, & condons of the lease [or underlease] by wch the same is held as stated in the parlars, & subjt also to all rights of way, water, drainage, light, & other easemts, if any, affectg Easements tenancies, &c.

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to take a title other than that which he contracted for, see *Re Bryant*, 62 L. T. 53, affd. 44 Ch. D. 218; but where the defect admits of being cured by other parties joining merely by way of confirmation, the case is different; *Re Thompson*, 44 Ch. D. 492.

As to stamps on contracts for sale see the Stamp Act, 1891, 54 & 55 Vict. c. 39, s. 59; *post*, p. 349, note. Stamp.

(*d*) This memorandum may be adapted to a sale by private contract by omitting the references to the auction, and adding at the end, "so far as the same are applicable to a sale by private contract." Variation for sale by private contract.

(*e*) See the notes to the last Precedent, and the Preliminary note, p. 253; and see also SPECIAL CONDITIONS, III.

the same, & to the underleases or agrmts with the sub-tenants or occupiers.

Purchaser to have notice of contents of lease, &c. (*a*).

6. THE lease [or underlease] under wch the ppty [each lot] is held, & counterpts of the underleases or agrmts (if any) with the tenants, or copies thof, will be produced at the sale, & may be inspected at the office of the vendors' solors at any time within, *one week*, prevsly, & the pchaser [respive pchasers] (whether takg advantage of such opportunity of inspon or not) shl be deemed to have full notice of the contents of all such docts (whether of a usual character or not), & of the terms of the sub-tenancies (notwg any partial or incomplete statemt of such contents or terms in the parlars or these condons or any inaccuracy in such statemt) [& of the state of the ppty as to repairs, insce, pty-walls, & all other mres]. [*Add clause in brackets at end of condon* 5, p. 261.]

Title (*b*).

7. THE title to the ppty [each lot] shl commce with the lease [or underlease] under wch the same is held as stated in the parlars, & the pchaser shl not call for the prodon of or make any objon or requon respting the lessor's or prevs title, although the same may be recited or refd to, or he may orwise have notice thof, but shl assume that such lease was well granted [& that any lease purportg to be grted in exercise of a power was in conformity with such power]. *Add any special condons as to title, &c., see* SPECIAL CONDONS.

[8. *As to recitals being evidce*, p. 262.]

9. *Identity*, p. 262.

Evidence of performance of covenants (*c*).

10. THE rect for the last rent accrued due prevsly to the complon of the pchase in respt of the ppty [each lot] shl be

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(*a*) See *Reeve* v. *Berridge*, 20 Q. B. D. 523; *Re Davis & Cavey*, 40 Ch. D. 601; *Cox* v. *Coventon*, 31 Beav. 378. Care should be taken not to misdescribe an underlease as a lease; see *Re Beyfus*, 39 Ch. D. 110.

(*b*) As to the omission of this condition under the V. & P. Act, 1874, s. 2 (2), and the Conv. Act, 1881, s. 3 (1, 4, 5), see above, p. 252. For other forms, see SPECIAL CONDITIONS, II.

(*c*) As to the omission of this condition under the Conv. Act, 1881, s. 3 (4, 5), see above, p. 254. For other forms, see SPECIAL CONDITIONS, III.

accepted as conclusive evidce of the pformce of all the covts & condons in the lease [or underlease] under wch the same is held [&, in the case of an underlease, of the paymt of all rent accrued due under, & the pformce or observce of all the covts & condons contd in, the superior lease], or of the effectual waiver of any breach of any covt or condon up to the complon of the pchase.

[11. *Expses*, p. 263.]

[12. *Registron & stampg*, p. 263.]

13. *Convce & covts*, pp. 263, 264.

14. THE pchaser [of each lot] shl covt to indemnify the vendors [& the este of their testor] agst the rents & covts of the lease [under wch the same is held], & shl for that ppose, if required, exte & deliver to the vendors a duplicate of the assnmt to be prepared & stamped by & at the expse of the pchaser (*e*). Indemnity to vendors against rent, &c. (*d*).

15. *Custody of title deeds & acknmt as to prodon, &c., if required, see* SPECIAL CONDONS, XII.

[16. *Apportionmt of rents, &c., if necy, see* SPECIAL CONDONS, VIII.]

17. *Time for deliverg requons, &c.*, p. 265.

18. *Compenson for misdescription*, pp. 267, 268.

19. *Non-compliance with condons*, p. 268.

Form of memdum of contract, p. 268.

(*d*) The indemnity may be required although the vendor is only an assignee of the lease, as he or his testator may have entered into a similar covenant, and as it has been held that he remains liable to the lessor under the Apportionment Act, 1870, for an apportioned part of the current rent which becomes due after completion: *Swansea Bank* v. *Thomas*, 4 Ex. D. 94, a questionable decision. The provision may be omitted, as the purchaser is bound to give the covenant: Dart, V. & P. 629. As to indemnity against rent, &c.

(*e*) It is believed to be now usual to throw the expense of a duplicate of the conveyance (which is inconsiderable) on the purchaser.

III.

GENERAL CONDITIONS *on* SALE *by* AUCTION *of land of any tenure. A very* SHORT FORM *relying on the* STATUTORY PROVISIONS (*a*).

1. *As to biddgs*, p. 257.
2. *Valuon, short form*, SPECIAL CONDONS, pp. 273, 274.
3. *Deposit & complon*, p. 258.
4. *Posson & intt*, p. 260, *form* 4 (B).

Incumbrances, &c.

5. THE ppty is sold subjt to all outgoings & incidents of tenure, easemts, & other rights, & the [under] leases or agrmts with the tenants, copies of wch if in writg [as well as of the lease under wch the ppty is held] will be produced at the sale, or may be seen prevsly at the office of the vendors' solor, & the [each] pchaser shl be deemed to have full notice of the contents thof.

6. *Condons as to commcemt & evidce of title, abstract, &c., see* SPECIAL CONDONS.

7. *Identity*, p. 262, *form* 8 (B).

8. *Custody of title deeds, &c.*, SPECIAL CONDONS, XII.

Requisitions.

9. ANY requons or objons arisg on the abstract, parlars, or condons shl be sent in within —— days after the delivery of the abstract, orwise the same shl be considered as waived (in wch respt time shl be of the essce of the contract), & if the [any] pchaser shl insist on any objon or requon wch the vendors shl be unable or unwillg to satisfy, the vendors may by notice in writg to the pchaser or his solor, annul the sale on returng or tenderg the deposit witht intt, costs, or other paymt.

10. *As to misdescription*, p. 268, *form* 17 (B) *or* 17 (C).

11. *Non-compliance with condons*, p. 268.

Form of memdum of contract, p. 268.

(*a*) This form contains the important conditions, and may often suffice for small transactions; but see notes to the two preceding Precedents

SPECIAL CONDITIONS.

I.

Valuations *of* Timber, Fixtures, &c. (*b*).

1. The timber & timber-like trees, down to the value of one shillg per stick, pollards, tellers, & underwood down to the stub [& the growg crops] shl be pd for by the pchaser at a valuon to be made at the jt expse of the vendors & pchaser by the auctioneer, *or*, "by 2 psons, one to be named by the vendors, & the other by the pchaser, or by an umpire to be named by the valuers bfe pcdg to the valuon, but if eir the vendors or pchaser refuse or neglect to name a valuer, or to notify the same in writg to the other pty within 10 days after being reqted by such pty so to do, or if eir of the valuers shd refuse or neglect to act for 10 days after notice in writg from the other valuer callg upon him so to do, then the valuon shl be made by the valuer (if duly notified as afsd) of the other party alone," or failg such valuon, at their fair value: And the price thof shl for all Timber (*c*).

(*b*) See as to sales by valuation, Dart, V. & P. 257. A mere appraisement by valuers was held not to be an arbitration within the meaning of the Common Law Procedure Act, 1854 (*Re Dawdy*, 15 Q. B. D. 426; *Re Carus Wilson*, 18 Q. B. D. 7; Dart, p. 260); and this would seem to be so also under the Arbitration Act, 1889, 52 & 53 Vict. c. 49. As to valuations.

(*c*) As to the sale of timber separately from the land and the rights of a tenant for life, see *Cockerell* v. *Cholmeley*, 3 Russ. 565; 1 Russ. & M. 418; 6 Bligh, N. S. 120; 1 Cl. & F. 60; *Doran* v. *Wiltshire*, 3 Sw. 699; *Re Llewellin*, 37 Ch. D. 317; Dav. Prec., Vol. III., 295. As to sales of timber.

the pposes of these condons (except as to paymt of deposit) be deemed to be pt of the pchase-moy [but as regards the copyhd pt of the ppty such intt only as the vendors have in the timber is included in the sale].

The same. Another form.

II THE timber & other trees on each lot shl be pd for by the pchaser in addon to the amt of his biddg at the price named in the parlars, psuant to a valuon made prevsly to the sale by Mr. ——, & the amt of such valuon shl for all the pposes of these condons (includg paymt of the deposit) be deemed pt of the pchase-moy.

Fixtures and furniture.

III. THE shop & [tenant's] fixtures, fittgs, & furniture in or upon the ppty [any lot] shl be pd for by the pchaser at a valuon to be made, &c., *as above*, No. I., *addg in the case of leaseholds*, "& the decision of the auctioneer, *or*, 'valuers or umpire,' as to what are tenant's fixtures or fittgs shl be conclusive."

Crops, farming stock, tillages, &c., when farm sold as going concern (*a*).

IV. THE pchaser shl take & pay for at a fair valuon to be made by 2 referees, to be named one by the vendors & the other by the pchaser, or by an umpire to be named by such referees bfe beginng the valuon, the [crops &] stk (live & dead), & the hay or other fodder, straw & manure, & the tillages & acts of husbdry, *or*, "the ploughgs, seeds, & sowgs, labour on manures & work done on the land after harvest, & the labour on the fallows," & other tenant's ppty usually taken by an incomg farm tenant from an outgoing one, such valuon to be made on the basis of the custom of the country prevsly to the complon of the pchase, from wch time the same resply shl be at the risk of the pchaser, & he shl be entled (on paymt of the balce of the pchase-moy & the amt of such valuon) to enter into occupon: [But the vendors shl be entled to the use of the barns, granary, & yards, until the 1st day of May next, for the ppose of housg, thrashg, & marketg the psnt yr's crops.]

(*a*) That an auctioneer's memorandum of contract of sale of farm produce without payment on delivery is a bill of sale within the Act of 1878, see *Re Roberts*, 36 Ch. D. 196. As to the sum payable on a farm valuation by an incoming tenant being subject to rent due to the landlord, see *Stafford* v. *Gardner*, L. R. 7 C. P. 242.

v. Unless an arrangemt shl be made for givg the pchaser the control of the game preservg pendg the complon of the pchase, the vendors will continue to preserve as if they were going to continue the enjoymt of the este, & the pchaser shl on complon pay to them the sum of £—— for the expses thof. Game preserving.

vi. The pchaser shl take at a fair valuon, to be made by two appraisers (one to be appted by the vendors, & the other by the pchaser), or their umpire to be chosen in the usual mner, all the furniture, tenant's fixtures, fittgs, & effects on the premes (other than the stk-in-trade, & such things as the vendors may desire to remove), & the decision of the appraisers or umpire as to what are tenant's fixtures & fittgs shl be conclusive. The pchaser shl also take such of the stk-in-trade upon the premes as shl not have been sold or disposed of at the time of the complon of the pchase accdg to the valuon of two gaugers, one to be appted by the vendors, & the other by the pchaser, or their umpire to be chosen in the usual mner, & the amt of the respive valuons, & a proportion for the time unexpired of the licences & fire insce appertaing to the premes & to the effects thrin, & of all outgoings, shl be pd by the pchaser at the time of the complon of the pchase, & if the pchaser shl neglect or refuse to appt an appraiser for 3 days after being required so to do, or to appt a gauger on reqt, or if the appraiser or gauger appted by the pchaser shl neglect or refuse to nominate an umpire on reqt or to pceed in the valuon, the appraiser or gauger appted by the vendors shl make the valuon alone, & the same shl be bindg on the pchaser. Public-house valuations.

vii. The pchaser shl on complon of the pchase pay for & in respt of the licences & insces subsistg at the time of complon a sum proportionate to the time unexpired thrin, & the vendors will, at the expse of the pchaser, do all such acts for transferrg the licences & insces to the pchaser or his nominee as are usual in like cases, & in the event of the licences or insces havg expired will, if required by & at the expse of the pchaser, apply for & endeavour to obtain a renewal thof The same. Another form.

resply to him or his nominee, but the complon of the pchase shl not be thby delayed (*a*).

II.

As to Commencement *and* Deduction *of* Title.

Title commencing with a conveyance.

I. The title shl commce with a convce on sale, dated, &c. [& the pchaser shl not require the prodon of or investigate or make any requn or objon in respt of the prior title, whether the same shl appear or be in the vendors' posson or power, or not] (*b*).

Title commencing with a will.

II. The title shl commce with the will of a testor, who died in 18—, & no proof shl be required of the testor's seisin or ownership, [*or*, The title shl commce with a genl devise of real este made by the will of a testor, &c., & the pchaser shl assume the seisin or ownership of the testor, & that the ppty passed by the devise]. [*Earlier title not to be called for, see* No. I.]

Title commencing with several instruments.

III. The title shl commce as to the greater pt of the ppty with a pchase deed in 18—, & as to the remr of the ppty (being the copyhd pt), with an admittee in 18— [*or*, The title to the ppty shl commce as follows, (namely), as to the great bulk thof [lots ——] with a pchase deed in 18—; as

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(*a*) See *Cowles* v. *Gale*, 7 Ch. 12.

As to restricting length of title.

(*b*) As to this condition, see the Conv. Act, 1881, s. 3 (3), above, p. 252. It is in all cases desirable to state the nature of the deed made the root of title, and in some cases (as where the deed is voluntary), it is necessary to do so; *Re Marsh*, 24 Ch. D. 11. It should be borne in mind that trustees may be deterred from bidding where too short a title is offered, although if it should appear that it is a good holding title they might be protected by the Trustee Act, 1888, s. 4, sub-s. (3).

Constructive notice.

A risk to which a purchaser accepting less than a 40 years' title may sometimes be exposed is that of being fixed with constructive notice of some matter (such as a restrictive covenant) not disclosed by the later deeds, which he would have discovered had he not contracted himself out of the right to investigate the earlier title; see *Patman* v. *Harland*, 17 Ch. D. 353; *Nottingham, &c., Brick Co.* v. *Butler*, 16 Q. B. D. 778; *Re Cox*, [1891] 2 Ch. 109.

to the portions coloured —— in the annexed plan [lots ——] with a deed of mtge, *or*, parton, *or*, settlemt in 18— (except as to a small piece contg about —— perches, to wch no earlier title will be shown than a convce in 18—); as to certn portions contg about —— acres, wch cannot now be identified or distinguished, but wch are included in that pt of the ppty wch is coloured —— in the plan [lot ——], with the will of a testor who died in 18—, & whose seisin or ownership shl be assumed], & in every case the respive assurces or docts, with wch it is above stipulated that the title to the respive pts of the ppty [lots] shl commce, shl be accepted as good roots of title, & the prior title shl not be required, enquired into, or objected to, whether the same shl appear or be in the vendors' posson or power or not, & no requon or objon shl be made resptg anythg contd or appearg in any of the docts with wch the respive titles commce.

Option to purchaser to call for earlier title at his own expense.

IV. The title shl commce with, &c.: But as this restron is only made to prevent expse to the vendors, the pchaser will be at liberty to have the earlier title, commencg with, &c., abstracted & deduced at his own expse provd he shl require the same, by a written notice to the vendors or their solor, within —— days after the delivery of the abstract of the later title.

Inspection of earlier title before sale.

V. The title shl commce with, &c. The earlier title deeds in the posson of the vendors & an abstract thof may be inspected at any time bfe the sale at the office of the vendors' solor, but no investigon into, or objon or requon in respt of the prior title shl be made subseqtly to the sale.

Proof of title to be partially dispensed with on the ground of a recent investigation.

VI. In the yr ——, certn ppty held under the same title as that now offered for sale was sold by the vendors to —— for a sum exceedg £——, upon wch occasion the title was approved after a full investigon [*or*, The ppty was formerly pt of the "—— este," & was pchased by the late owner, under whom the vendors claim, in the yr ——, on wch occasion the title was fully investigated], of wch fact a statutory declon, to be furnished, if required, at the expse of the

pchaser, shl be sufft evidce (*a*). It is accdly stipulated, in order to save the unnecy trouble & expse of anor investigon of the title prior to the yr ——, that the pchaser shl be content with an abstract commencg with, &c., & shl not call for or investigate or make any requon or objon resptg the earlier title, [*add, if thought fit, an offer givg the pchaser the rt of callg for the earlier title at his own expse or inspectg it bfe the sale, as above,* Nos. IV. *&* V.].

Title to small lots forming part of family estates (*b*).

VII. As the ppty forms pt of large family estes, & an abstract of the whole title is necessarily voluminous, it is stipulated that with respt to any lot wch shl fetch less than £——, the pchaser shl be satisfied with a convce from the vendors, witht requirg any title or evidce of title whatever to be shown, *or*, "shl only be entled to an abstract commencg with the settlemt, dated in the yr ——, under a power of sale contd in wch the psnt sale is made, & wch contains recitals of the earlier title, & shl not be entled to make any requon or objon resptg such earlier title," *or*, "in the case of lots fetchg less than £——, the abstracts will be short summaries of the title only, but the pchasers may have fuller abstracts at their own expse."

Purchaser to take such title as vendors have.

VIII. As to certn small portions of the ppty, comprisg togr about —— acres, [wch were pchased by the psnt vendors at various times betn the yrs —— & ——,] the pchaser shl be content with such title as the vendors have [accepted on such respive pchases].

Recent commencement, prior title deduced by recital.

IX. THE abstract shl commce with a deed of convce, dated, &c., wch deduces the title to the ppty by recital from the yr ——, & the pchaser shl be satisfied in all respts with such recital of the prior title & shl not require any evidce or informon as to anythg recited, disclosed, or refd to in such convce or orwise in relon to such prior title.

Restriction as to abstract on sale in small lots.

X. AN abstract of the title, commcg as above provd, may be perused & examined with the deeds 10 days bfe or

(*a*) See *Symons* v. *James*, 1 Y. & C. C. C. 487.
(*b*) See Dart, V. & P. 167.

at any time after the sale, at the office of the vendors' solor, but to save expse to the vendor it is stipulated that no pchaser shl be entled to a copy of the abstract, except on paymt of 2 guineas for the same, & unless he applies for it within 1 week of the sale.

Option to purchasers to have free conveyances.

XI. Any pchaser who shl be willg to forego the investigon of the title & to accept a convce (prepared by the vendors' solors) of his lot or lots, & shl apply to them for such convce within 7 days of the sale, may have the same free of all expses except the paymt of the stamp duty & of —— guineas for the expses connected thwith, but if such notice is not given within the sd 7 days the pchase must be completed in the usual way, & every pchaser who shl elect to accept such convce as to any lot must make the same election as to every other lot pchased by him, & the vendors will not give such free convce in any case in wch they have been put to any expse eir as to title or convce other than the chges of their own solors for the preparon & exon of such convce. A copy of the form of convce will be produced at the sale, & may be inspected aftwds at the office of the vendors' solors.

Enfranchised copyholds (c).

XII. As to pt of the ppty wch was formerly copyhd, held of the manor of ——, & was enfranchised in the yr ——, the pchaser shl take subjt to the reservons & mres contd in the deed [award] of enfranchisemt [& to the rts of the lord of the manor in respt of minls or orwise].

Exchange (d).

XIII. As to any pts of the premes wch have been derived under exchanges the vendors shl not be required to produce any evidce of the title of the psons from whom the same were taken in exchange anterior to the deed or deeds by wch such exchanges were effected, nor to deduce the title to the lands given in exchange, but such exchanges shl be assumed to have been in all respts valid.

(c) See *Bellamy* v. *Debenham*, [1891] 1 Ch. 412. As to the lord's title, see above, p. 253.

(d) See *infra*, Exchanges; and 1 Dart, V. & P. 326 *et seq.*

The same. XIV. An agreemt for exchge in 18— does not appear to have been carried out by actual convce, but as the land taken in exchge has been since held in accordce with the terms of the agreemt (of wch fact a statutory declon will be furnished if required at the pchaser's expse), the pchaser shl not require a convce thof to be obtained, or make any objon or requon with reference to such exchge.

Allotment under Inclosure Award (*a*). XV. The title to pt of lot —— shl commce with an award, dated, &c., under an Inclosure Act, & the pchaser shl assume the validity & regularity of the award, & shl not call for the title to the lands in respt of [or in exchge for] wch the allotmt was made, but shl assume that the allottee became seised in fee simple of the land allotted, subjt only to the reservons & mres contd in the award [and to the rts of the lord of the manor in respt of minls or orwise].

The same. XVI. As to certn allotmts, the title to wch is derived under an award made in the yr —— under the —— Inclosure Act, the pchaser shl assume the validity & regularity of the award, & that the allotmts were made in respt of [or in exchge for] pt of the lands comprd in a settlemt dated, &c., & so as to follow the title to such lands (*b*).

Title under will, intestacy and possession. XVII. The title shl consist of the will of a testor who died in 18—, contg a genl devise to the father of the psnt vendor, & a statutory declon that since 18— (in wch yr his father died intestate, leavg the vendor his hr) the vendor has been in the undisputed posson & enjoymt or rect of the rents of the ppty. The pchaser shl be satisfied with the above, & shl not require any further or other title or evidce of title.

Title under deed of gift (*c*). XVIII. The ppty passed to the prsnt vendor in 18— by deed of gift. The pchaser shl not found any objon or requon on this fact, but shl be satisfied with a declon, to be made by one of the donor's family, that the donor was at that time

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(*a*) As to this and the next form, see 1 Dart, V. & P. 186, 326, *et seq.*; *Jacomb* v. *Turner*, [1892] 1 Q. B. 47.

(*b*) See the General Inclosure Act, 6 & 7 Will. 4, c. 115, s. 33.

(*c*) As to vendors claiming under voluntary deeds, see *Re Briggs*, [1891] 2 Ch. 127.

& has since continued amply solvent & has not since dealt or attempted to deal with the ppty.

Land purchased from Railway Company (*d*).

XIX. As to lot ——, wch was pchased by the vendors in the yr —— at a sale of a portion of the surplus lands of the —— Rly Co, the abstract shl commce with the convce to the vendors, dated, &c., & the pchaser shl not call for or investigate the prior title, or make any requon or objon with respt to the powers of the Co, or their compliance with the requiremts of their Acts with reference to the acquison or sale of the ppty comprd in this lot.

Sale by Railway Company or public body (*d*)

XX. THE ppty (with other land) was pchased by the vendors in the yr 18—, for the pposes of their undertakg, *or*, "the pposes authorised by the —— Act," but is no longer required for such pposes, & as it is the practice of the vendors strictly to investigate the title to all ppty pchased by them, the title to be deduced shl consist exclusively of the deed of convce to the vendors, wch shl be assumed to have been effectual to vest the ppty in them, & it shl also be assumed that they have full power to sell and convey the same.

As to purchase by trustees of settlement; exclusion of right to abstract of settlement.

XXI. THE ppty havg been pchased in 18— by the trees of a settlemt & conveyed to the uses [to them upon the trusts] thof, & havg been aftwds sold under the powers or trusts of such settlemt [under the Settled Land Act, 1882], it is stipulated (to save expse) that the pchaser shl accept the recitals of or references to such settlemt & the apptmts of new trees thof, wch are contd in the convces exted on the pchase & re-sale of the ppty, as sufft, & shl not require any abstract or make any requon in respt of the sd settlemt & apptmts of new trees.

The same for purchase with

XXII. THE ppty, wch is being sold by the vendors as trees of a settlemt, was pchased in 18— under a power contd in

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Sale of superfluous land.

(*d*) As to the right of a company on the sale of superfluous land to reserve an interest, see the L. C. C. Act, 1845, s. 127; *Re Thackwray*, 40 Ch. D. 34; as to the right to impose restrictive conditions on the purchaser, see *Re Higgins*, 21 Ch. D. 95; and generally on the sale of superfluous land by a railway company, see note, *post*, under CONVEYANCES.

out disclosing trust (*a*).

the settlemt for the investmt of the trust moy in the pchase of land to be held in trust for re-sale, but was conveyed to the trees witht disclosg the trust. The pchaser shl be satisfied with a short abstract of the above mentd clause in the settlemt, & of an apptmt of new trees thof in 18—, & shl not make any requon in respt of such settlemt & apptmt.

Satisfied term (*b*).

XXIII. In the yr —— a term was assned to attend the inhance. The pchaser shl not be entled to investigate the earlier title to the term or to require any evidce or informon, beyond what is afforded by such assnmt or the docts showg the title to the inhance, as to the creation of or prior dealgs with the same, *or*, "the vendors shl not [except at the pchaser's expse] be required to show the creation of or to trace the title to any term wch has been assnd to attend the inhance."

Waste of manor.

XXIV. A SMALL pt of the ppty was formerly waste of the manor of ——, & was enclosed with the consent of the homage given at a court baron held on the —— day of ——, as appears by an entry on the court rolls. It shl be assumed that the same thby became indefeasibly vested in fee simple in the pson who made the enclosure.

Site of road.

XXV. A ROAD boundg a portion of the ppty was in the yr

As to trustees' covenants where trust not disclosed.

(*a*) This course is considered better than to attempt to resell without disclosing the trust, and in the event of a trustee having died, would be necessary to avoid difficulty as to succession duty (see *infra*, CONVEYANCES ON SALE). If the trust is not disclosed, a question arises as to the covenants for title and production, &c., of deeds to be entered into by the trustees; and a condition may be necessary for their protection in these respects, unless they are willing to enter into the usual covenants of beneficial owners, the liability under which in such a case would be little (if anything) more than nominal. The condition might provide that they should only be required to covenant that they respectively have not encumbered, or (which would be practically sufficiently protective), that the liability of each under the covenants for title and further assurance should be restricted to the acts of himself and persons claiming under him, and (as to muniments) that an undertaking for safe custody should not be required. Such a condition (in whichever form) would not put the purchaser on enquiry as to the existence of a trust, or oblige the vendor to answer the enquiry if made.

(*b*) See the Satisfied Terms Act, 8 & 9 Vict. c. 112; Dart, V. & P. 576.

—— diverted, & the old road or a portion thof togr with a small pce of the adjoing land was thrown into & now forms pt of the ppty in lieu of the land taken for the new road or thby severed from the ppty. No objon or requon shl be raised in respt of such diversion on the ground of any insufft authority for makg the same, or orwise as to the vendors' title to the old road or the small pce of land.

Sale of charity land (*c*).

XXVI. THE ppty offered for sale consists of the bldgs & site known for many yrs past as ——, & the sale is made under the authority of the Board of Charity Commrs. The vendors shl not be bound to furnish any abstract of title, or to produce any deeds or evidce of title other than a copy of an order of the sd Board apptg the vendors to be trees of the charity, & vestg the legal este in the ppty in the Official Tree of Charity Lands, & a copy of anor order of the same Board sanctiong the sale to the pchaser, wch shl be accepted as a sufft title.

As to roads and rights of way.

XXVII. EVERY pchaser shl be satisfied with such roads & rts of way to the ppty as at psnt exist, witht requirg any evidce of the grt or rt of user thof.

Registered title (*d*).

XXVIII. THE ppty is registered with an absolute title under the Land Transfer Act, 1875. The title will consist of a copy of the land certfe, & any evidce of identity wch the pchaser may require shl be at his own expse.

Express incorporation of statutes (*e*).

XXIX. THE vendors will deliver to the pchaser an abstract of their title to the ppty, & deduce a good title thto, subjt to the combined operon of the Vendor & Pchaser Act, 1874, & the Conv. & Law of Ppty Act, 1881, & these condons.

(*c*) See note, *post*, under CONVEYANCES, as to sales of charity lands.

(*d*) See the Act, 38 & 39 Vict. c. 87.

(*e*) This could of course only be required in exceptional cases, as the Acts apply, unless excluded expressly or by implication.

III.

Leaseholds (*a*).

Old lease (*b*).

I. The pchaser shl be furnished with an abstract of the lease, dated, &c., under wch the ppty is held, & of an assnmt of such lease, dated, &c., & the subsequent title, & shl not question the validity of the lease, or make any objon or requon in respt of the intermediate title to the premes betn the lease & the sd assnmt, notwg any recital of, or reference to such title contd in the assnmt or any subsequent doct, but shl assume that the sd assnmt vested in the assnee a good title for the residue of the term.

Renewable leaseholds.

II. The abstract shl commce, as regards the vendors' or leasehders' title, with a lease dated in 1850; & the pchaser shl not make any requon or objon resptg the earlier leasehders' title or the title of any of the lessors, nor require any evidce, beyond what appears on the lease, that the lessee of 1850 was the owner of the whole intt in the prevs lease thby expd to have been surrendered; & inasmuch as the lessors on each renewal require the surrendered lease to be delivered up, the pchaser shl be satisfied as regards such surrendered lease with the prodon of a doct purportg to be a copy or draft thof, & shl not require any proof of the surrender thof beyond what appears in such new lease.

Underlease; or where part only of the property in the lease is sold.

III. No objon shl be taken, or indemnity required on acct of the lease or agrmt under wch the ppty [any lot] is held being an underlease, or agrmt for an underlease, or on acct of [such lease, or agrmt, or] the superior lease, comprisg other ppty besides the ppty sold [such lot] or being at a larger rent than the underlease or agrmt [or on the ground of the lessor not havg concurred in any apportionmt or

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(*a*) See above, p. 253 *et seq.*

(*b*) See *Frend* v. *Buckley*, L. R. 5 Q. B. 213; 1 Dart, V. & P. 335, above, p. 253.

exclusive chge of rent], or by reason of any variance betn the covts, provons, & condons in the superior lease & the under-lease or agrmt, or for any other reason connected with the superior lease.

The same.

IV. THE abstract shl commce with the superior lease, & the pchaser shl not call for, or make any requon or objon concerng the title of the superior landlord, or require any proof of the pformce of the covts & condons contd in the superior lease.

Receipt for rent. Performance of covenants (*c*).

V. THE prodon of the last rect for the rent (witht proof being required of the title or authority of the pson givg the same) shl be conclusive evidce that all rent under any superior lease has been pd, & that all the covts & condons in the lease or agrmt for lease to wch such rect refers & in every superior lease have been pformed & observed, or that all breaches thof (whether past or continuing) have been effectually waived or sanctioned up to the time of the complon of the pchase, whether it shl appear that the lessors or reversioners were cognisant of such breaches or not: [AND in parlar no objon or requon shl be made on the ground that the insce of any of the premes is not accdg to covt, & the vendors shl not be required to rectify any insce or to effect any fresh insce.]

The same where rent nominal or charged on other property (*d*).

VI. IT shl be assumed witht evidce that [all rent accrued due under the lease has been pd, & that] all the covts & condons in the lease have been duly pformed & observed or that any breach thof has been effectually waived up to the complon of the pchase.

Non-execution of lease by one lessor.

VII. ONE of the ten trees of the —— Charity who are named as lessors in the lease of, &c., refd to in the parlars, did not exte such lease. The pchaser shl not on this ground question the validity or require any confirmon of the lease, but shl accept as sufft evidce of the validity & existce thof

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(*c*) See as to this condition, p. 254; *Lawrie* v. *Lees*, 7 App. Cas. 19, 32, 38; 26 Sol. J. 445.

(*d*) See *Re Moody*, 28 Ch. D. 661, 30 Ch. D. 344; above, p. 254.

the prodon of a rect for the last half yr's rent accrued due prior to the complon of the pchase.

Former assignments without license.

VIII. LOTS —— are held under leases from the —— Co, wch contain restrons agst alienon or underlettg witht license, & also require that all writgs relatg to the premes shd be prepared by the clerk of the lessors. The pchasers shl not make any objon or requon in respt of any dealgs with the leases appearg to have taken place witht license, or in respt of the insufficiency of any license, or on acct of any instrumts relatg to the premes not appearg to have been prepared by the clerk of the Co.

License to assign (*a*).

IX. THE lease of lot —— contns a restron agst alienon or underlettg witht the license of the lessor. The pchaser shl not enquire into the title of the pson by whom the license (wch will be procured by the vendors at their own expse) may purport to be signed, or his rt to grt the same, nor make any objon or requon resptg the sufficiency or form of such license.

The same.

Purchaser to take underlease if necessary.

X. A LICENSE from the respive lessors to assn the leases [of lots —— & ——] being necy, the vendors will endeavour to obtain such licenses at their own expse, but in case any difficulty shl in the case of eir lot arise in this respt the contract [as to such lot] shl be carried out by an assnmt to an approved tree for the pchaser or by the grt of an underlease to the pchaser for the whole term except the last day.

As to nominal reversion outstanding in mortgagor.

XI. No objon shl be taken on acct of the sale being of derivative or sub-terms (wch were created by mtges by demise in the usual way, leavg a nominal reversion of one day of the term created by the origl lease outstandg in the mtgor in each case), & the vendors shl not be required to get in such revon of the ppal term or to show in whom it is now vested, but the pchaser will have the benefit of the provon in each of the mtge deeds makg the mtgor a tree of the nominal revon for him.

(*a*) As to when the licence should be obtained, see *Ellis* v. *Rogers*, 29 Ch. D. 661.

XII. The lots being all held under the same lease, the sale shl be effectuated by the pchaser of such one of the lots as the vendors shl think fit takg an assnmt of the lease, subjt to underleases of the other lots, to be previously grted by the vendors to the respive pchasers thof for the whole term less one day, at the respive apportioned rents mentd in the parlars, such underleases contg covts by the respive pchasers for paymt of such respive rents, & the pformce & observce of the covts in the origl lease so far as the same relate to their respive lots, & the sd assnmt contg the usual covts by the assnee for the paymt, pformce & observce, & indemnity of the vendors [& the este of their testor] in respt of the rent, covts, & condons of the origl lease. The

Leaseholds in lots held under one lease. One purchaser to take an assignment subject to underleases to the other purchasers (*b*).

(*b*) There is a want of uniformity in the practice as to the mode of selling leaseholds held under one lease in lots. The more common plan has been to assign the lease to the largest purchaser, by whom underleases are granted to the other purchasers (see the forms of such an assignment and underlease *infra*, Conveyances on Sale); but the plan above adopted of reserving to the vendor the right of determining which purchaser shall take the assignment seems better, as it makes it unnecessary to provide against difficulty which might otherwise arise in the event of the completion of the purchase of any lot being delayed. The above condition also departs from what has been the usual plan in providing that the underleases shall be granted by the vendor before the assignment instead of by the assignee afterwards; which also seems better. The main question is as to the covenants. In the assignment the vendor will, of course, if a beneficial owner, enter into the usual vendor's covenants for title (but which, if the underleases are previously granted by him, it is suggested should be subject to the qualification in the text to protect him from liability in respect of future breaches of covenant by the underlessees); or if a trustee or mortgagee, will merely covenant against incumbrances. As to the underleases there is more doubt. In the absence of stipulation each underlessee would be entitled, in addition to the usual covenant by the grantor for quiet enjoyment, to a covenant by him for payment of the rent under the original lease, and (which is somewhat onerous) for performance of the covenants as to the residue of the property: *Brown* v. *Paull*, 2 Jur. N. S. 317. It is obviously reasonable that the purchasers who take underleases should not thereby be deprived of the vendor's covenants for title; and in fact if the underleases are granted by the purchaser who takes the assignment of the lease, the underlessees would have the benefit of the vendor's statutory covenants for title in the assignment: see the Conv. Act, s. 7 (6). On the whole, if the vendor grants the underleases it is conceived that the

As to selling leaseholds held under one lease in lots.

Covenants.

vendors will, if required, enter into the usual vendors' covts in the assnmt & underleases (*a*) for title & further assurce (but not so as to render themselves liable in respt of any future breach of any of the covts or condons of the origl lease on the pt of any of the pchasers) with the addon in the underleases of the usual acknmt for prodon & undertakg for safe custody of the lease & the other docts of title (if any) in the posson of the vendors [*or, if the vendors are trees or mtges*, but the vendors being trees [mtgees] will not enter into any covts in the assnmt & underleases, except the usual covt agst incumbces with the addon in the underleases of the usual restricted covt for quiet enjoymt & an acknmt for prodon, but witht any undertakg for safe custody (*b*) of the origl lease, &c.]. The sd assnmt shl be prepared in duplicate by & at the expse of the pchaser to whom it is made, & the underleases & counterpts thof shl be prepared by the vendors at the expse of the respive pchasers, such expse not to exceed £——, *or*, "to be accdg to the authorised scale chge under the Solors' Remuneron Act, 1881" (*c*) in each case, exclusive of stamp duty, & shl be in the form wch will be produced at the sale, *or*, "& any question as to the form of the assnmt or any underlease shl be refd for decision to the vendors' counsel." If any lot remains unsold the origl lease & other docts of title (if any) will be retained by the vendors, who shl in that case stand in the

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covenants should be as in the text, which (as qualified above) would not be unduly onerous. If the underleases are granted by the purchaser who takes the assignment, he should covenant in the usual form for quiet enjoyment, and for payment of the rent and performance of the covenants in the head lease, and production of the head lease and other muniments; but in order not to deter purchasers (especially trustees), it may perhaps be better to restrict the covenant for performance of the covenants to the part retained by the covenantor.

(*a*) The statutory covenants would not apply to the underleases, except by express incorporation. See the Conv. Act, 1881, s. 7 (5).

(*b*) See above, p. 282, note.

(*c*) It may be better to state whether this is to be a combination of the scale charges for leases and sales, or the latter only, to prevent disputes.

place of the assnee of the lease for the pposes of this condon.

Sale of leaseholds by builders in lots.

Leases to be granted to purchasers.

XIII. THE ppty is held under an agrmt, dated, &c., for the grtg of leases of the sevl tenemts to the vendors, *the builders*, or their nominees (no leases havg yet been grted). A copy of this agrmt may be seen at any time bfe or after the sale at the office of the lessors' solors, durg business hours; but no pchaser shl be entled to any abstract or copy thof, or to make any objon or requon in respt of anythg thrin contd, or in respt of the lessors' title wch shl not be called for, or inquired into. And upon paymt of the balce of the pchase-moy at the time & place afsd, the lessors will grt to each pchaser as nominee of the vendors a lease of the lot or lots, or (in case any pchaser of more than one lot shl so require) a septe lease of each lot pchased by him, every such lease to be prepared by the lessors' solors, & to be at the ground rent & for the term stated in the parlars, & accdg to a form wch may be seen at any time previously to the sale at the office afsd & will be produced at the sale, with such modificons only as the circes of each case may require; each pchaser shl at the same time exte & deliver to the lessor a counterpt of his lease, & all expses attendg the preparon & the perusal on behalf of & exon by all pties except the vendors of each lease & counterpt shl be borne by the pchaser, *or*, " & the sum of £—— shl be pd to the vendors by each pchaser (in addon to the stamp duty) for the expse of the preparon, perusal, & exon by or on behalf of the vendors & lessors of each lease & counterpt."

Irregularities in underleases.

XIV. No objon shl be raised on the ground of any of the underleases to or agrmts with the tenants being at variance with the covts or condons of the origl [or any superior] lease or orwise irregular.

IV.

As to Various Descriptions *of* Property.

Advowson (*a*).

I. In case of the dece of the psnt incumbent of the sd benefice, or of his cession or relinquishmt thof bfe the complon of the pchase, the vendor will, at the reqt & expse of the pchaser, psnt such pson (being duly qualified) as the pchaser (he havg accepted the title & pd the pchase-moy) shl nominate, & if such psnton devolve on the Crown in consequce of the incumbent being promoted to a bishopric eir bfe or after the complon of the pchase, the sale of the advowson shl not be affected thby, nor shl the pchaser be entled to any dedon out of the pchase-moy.

Manor (*b*).

II. The vendors shl not be required to show the boundaries, extent, nature, or constituents of the manor, or to furnish any other evidce or informon in relon thto than may appear from the manorial books & docts in the vendors posson, & no objon shl be taken on acct of any of such books or docts being defective or wantg.

Reversion (*c*)

III. The pchaser shl be entled to all advantages of the sd reversion from the time of sale, & shl bear the succession [legacy] or other duty payable in respt thof, & in the event of the death of the tenant for life bfe the complon of the pchase, the rents & income or posson shl thenceforth belong to the pchaser, who shl pay intt on his pchase-moy at the

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(*a*) See the note to the Precedent of a conveyance of an advowson, *infra*.

Exception of demesne lands, &c.

(*b*) Where there are demesne lands or other constituents of the manor, such as mineral rights or an advowson, which are not to be included in the sale, they must be expressly excepted; see 2 Dav. Prec. pt. 2, p. 769, note; 1 Dart, V. & P. 138.

Sale of reversion.

(*c*) On a sale of a reversion in land with buildings and timber thereon, the fact, if it be so, that the tenant for life is not impeachable for waste, should be stated, as affecting the value. The powers of sale and leasing possessed by the tenant for life under the Settled Land Acts should also be borne in mind as affecting the transaction; see *Wheelwright* v. *Walker* 23 Ch. D. 752.

rate of £—— p.c. p.a. from the day appted for complon in case the actual complon shl be delayed beyond that day.

IV. THE pchaser shl be at the risk of the droppg of the life of the sd ——, & in the event of his death bfe the complon of the pchase, shl nevs pay the pchase-moy & such intt (if any) as may be payable thron accdg to the —— condon. Life estate.

V. THE prodon of the rect for the last premium shl be accepted by the pchaser as conclusive evidce (witht proof of the age of the assured, or of any of the facts stated in the declon on wch the policy was grted, or any other mre) that the policy is valid & subsistg. Policy of assurance.

VI. THE pchaser shl not require proof of the truth of the statemts relatg to the age & state of health of the pson on whose life the policy was effected, or any other statemts contd in the declon upon wch the policy was based, nor any proof that the pson by whom the policy was effected had then or has since continued to have a sufft intt in the life of the assured to support the assurce. The same. Another form.

VII. No title shl be required to be shown to any of the plant, machy, chattels, or effects, included in the sale. Chattels personal (*d*).

V.

MISCELLANEOUS CONDITIONS *as to* TITLE *and* COMPLETION.

I. THE vendor is sellg as mtgee, under a power of sale. The pchaser shl not be entled to any further proof that the mtge-moy remains owing or that the power of sale is pperly exercisable than the prodon of the mtge-deed, nor require Sale by mortgagee (*e*).

(*d*) This of course could only be needed in exceptional cases.

(*e*) This and the next condition would not be necessary if the power of sale is in proper form, or under the statutory power; but see *Parkinson* v. *Hanbury*, 1 Dr. & Sm. 143, 2 De G. J. & S. 450, L. R. 2 H. L. 1; *Selwyn* v. *Garfit*, 38 Ch. D. 273.

the concurrce of the mtgor or any other pson except the vendor in the convce.

Former sale by mortgagee.

II. The ppty was conveyed to the vendors in the yr —— by a mtgee, under a power of sale contd in the mtge. The pchaser shl not require proof that pper notice to pay off the mtge-moy had been given to the mtgor, or that default had been made in paymt thof, or in any way question the regularity of the sale.

Endorsed receipt not signed (*a*).

III. No objon or requon shl be made on the ground that the rect for the conson endorsed on a pchase-deed in 18— is not signed.

Enlargement of long term under Conv. Acts (*b*).

IV. By a deed poll in 18— under the provons of the Conveg Acts, 1881 & 1882, pt of the ppty wch was previously leasehd for a long term was expd to be enlarged by the beneficial owner into a fee simple. No objon or requon shl be made on acct of the lease or a copy thof not being forthcomg, or as to the contents thof or the identity of the pcels or orwise in relon thto, & it shl be assumed that the sd deed poll operated as an effectual enlargemt accdg to its tenor.

Proceedings in Chancery.

V. The ppty was pchased in the yr —— at a sale by the Ct of Chancery in a suit for extg the trusts of a will. The chief clerk's certfes in the suit in wch the este was administered shl be accepted as conclusive evidce of the mres thrin found & certified, & the pchaser shl not require any copies, extracts, or abstracts of the evidce on wch such certfes were founded, or any proof beyond what appears on the record of the pper pties havg been bfe the Ct, & shl assume the regularity of the pcdgs in the suit in all respts (*c*).

Supplemental abstract where enfranchisement pending.

VI. As regards any enfranchisemt or commuton of manorial rights wch may be pendg but incomplete at the time of the delivery of the abstract, the vendors shl deliver a supple-

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(*a*) See now the Conv. Act, 1881, ss. 54, 55; and *infra*, Conveyances on Sale.

(*b*) See the Act of 1881, s. 65, and the Act of 1882, s. 11; and Vol. II. Miscellaneous, note to deed enlarging term.

(*c*) See now the Conv. Act, 1881, s. 70; *Re Hall Dare*, 21 Ch. D. 41.

mental abstract of the same as soon thrafter as circes will permit; & these condons shl be considered to apply to such supplemental abstract as from the time of the delivery thof.

As to constitution, &c., of company.

VII. No requon or objon shl be made as to the constiton powers or pcdgs of or orwise in relon to a Co by whom the ppty was acquired in 18—, & afterwards sold in 18—, but such acquison & sale shl be assumed to have been valid & effectual in all respts.

As to building societies (*d*).

VIII. THE prodon of a printed copy of the rules of any Benefit Bldg Socy, incorpd or unincorpd, with a copy of the certfe of the certifyg barrister or of the certfe of incorporon (as the case may be) certified by the secretary or other officer of the socy, shl be taken as conclusive evidce that the socy was & is duly constituted, & no evidce shl be required of the apptmt of any origl or substituted trees, dirors, or other officers of any such socy, & no objon or question shl be raised as to the operon or effect of any statutory rect given on the redmon of any mtgage to any such socy or the trees thof, & all acts htfore done or for the pposes of this sale hrafter to be done by any such socy or the trees thof shl be deemed to have been & to be authorised & valid in all respts.

The same.

IX. THE pchaser shl not require the prodon of the rules or any informon as to the constiton of any Bldg Socy to wch or to the trees whof any of the ppty has been mtged, & shl assume witht any evidce that the psons to whom any such mtge was made, & the psons signg the rect on redmon thof, were resply the duly constituted trees for the time being of the socy.

Evidence of pedigree.

X. THE pchaser shl not require any evidce of the failure of issue of K., named in a deed in 18—, or of the number & names of the chn of L., also thrin named, or that M., one of such chn, died under age & witht havg been married, or

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(*d*) As to evidence of the constitution and rules of the Society, see 6 & 7 Will. IV., c. 32, s. 4; 37 & 38 Vict. c. 42, ss. 17, 20. As to the effect of the statutory receipt on redemption of a mortgage, see the former Act, s. 5; and the latter Act, s. 12; and *infra*, MORTGAGES. As to building societies.

of any other mre relatg to the pedigree of the vendors, other than a statutory declon of those facts lately made by a member of the family, the statemts in wch shl (witht any further evidce by prodon of certfes or orwise) be accepted as correct & suffit in all respts, & no objon shl be taken on acct of the declon havg been made by an intted pson.

Evidence of death.

XI. It shl be assumed that a pson who left this country about 30 yrs ago, & of whom nothing has since been heard, is dead, upon the evidce afforded by a statutory declon of those facts by a disintted pson.

Partnership property.

XII. Pt of the ppty was acquired by the vendor's testor, with a ptner who died in 18—, as ptnp or jt ppty. An agreemt betn the testor & the repves of the deced ptner contg an endorsed rect for the pchase-moy payable by the testor thrunder shl be considered as havg been a full settlemt of all questions betn the pties witht prodon of the ptnp articles, & also as a makg over of all intt of the deced ptner in the ptnp or jt ppty to the testor, & such agrmt shl not now as to any equitable este or intt be required to be carried out by convce, & as to any other mre thrunder shl be assumed to have been fully & effectually carried into effect.

Title under re-entry for non-payment of perpetual rent-charge.

XIII. The title is derived under a peaceable re-entry made in 18— by virtue of a power of absolute re-entry for non-paymt of a perpetual rent-chge of £—— contd in a deed in 18— by wch such rent-chge was reserved, & the vendors or their predecessors in title have ever since been in undisturbed posson or rect of the rents of the ppty. A statutory declon or declons by a pson or psons acquainted with the facts & speakg to the best of his or their knowledge, informon, & belief, shl be accepted as sufft & conclusive evidce of these facts, & that the power of re-entry had arisen & was well exercised, & that the seisin in fee of the ppty was thby acquired dischged of all claims of the previous owner, & no question shl be raised as to the validity of the power of re-entry (*a*).

Mistake as

XIV. A portion of the ppty in the parish of ——, wch is

(*a*) See *infra*, p. 335, note.

believed to be freehd, subjt only to the fee farm rent mentd in the parlars, has in sevl docts been treated as leasehd witht statg the term of yrs for wch, or the pson under whom, it was supposed to have been held. A declon will be furnished by a pson who has known the ppty for —— yrs, & for many yrs acted as agent for the owner in collectg the rents & dischg the outgoings, that he has always understood & still believes this land to be freehd. The pchaser shl therefore accept such title to this land as the vendors have, & take a convce thof from them as freehd. to tenure of land subject to fee farm rent.

XV. On a sale of pt of the ppty in 18— by trees of a settlemt a sum of £—— was pd to the tenant for life for the growg underwood. No objon or reqon shl be founded on this. Payment of price of underwood to life tenant.

XVI. No objon shl be taken with respt to the terms of the agrmts with the tenants [or on acct of the same havg been entd into by the mtgor alone (*b*)] or any irregularity thrin. As to agreements with tenants.

XVII. Any insurce against fire subsistg on the ppty [any lot] shl from the time of sale be for the benefit of the pchaser, subjt to the consent of the office, and subjt to the pchase being completed, & to the pchaser paying a proportionate pt of the prem for the unexpired term of the insurce, but the vendor shl not be bound to keep up or renew the insurce. [In the event of the occurrce of a fire bfe the complon of the pchase, the insurce moy shl (subjt as afsd) be applied in reinstating the ppty, or shl, at the option of the pchaser, be pd to him on completion.] Insurance against fire (*c*).

(*b*) See as to this, the Conv. Act, 1881, s. 18.

(*c*) Without this provision the purchaser will not get the benefit of the insurance (see *Rayner* v. *Preston*, 18 Ch. D. 1; *Castellain* v. *Preston*, 11 Q. B. D. 380) unless he could do so indirectly by calling on the insurance company to reinstate the building under the Act, 14 Geo. 3, c. 78, s. 83. *Qu.*, however, whether the decision in *Exp. Gorely*, 4 De G. J. & S. 477, that that enactment applies beyond the bills of mortality, is right; see per Lord Watson in *Westminster Fire Office* v. *Glasgow, &c., Society*, 13 App. Cas. at p. 716; and *cf.* per Lord Selborne at p. 714; see also 2 Dav. Prec., pt. II., p. 55 *et seq.* This form of condition avoids the objection suggested in 1 Dart, V. & P. 196. Sometimes the purchaser effects a temporary insurance on entering into the contract. If part of the purchase-money is to remain on mortgage, the provision giving the purchaser the right to receive the insurance money will of course be omitted. As to fire insurance.

Vendor lord of manor.

XVIII. Such of the lots as are within the manor of —— are sold & will be conveyed subjt to a reservon to the vendor of all manorial rts belonging to him as lord of such manor except such (if any) of those rts as are exply included in the sale.

Payment of succession duties (*a*).

XIX. Pchasers shl assume witht enquiry or requon that all succession duties wch became payable on the death of any pson who died more than ten yrs bfe the date of the sale have been pd.

Party walls.

XX. Every wall or fence betn any two lots or betn any lot & any other ppty of the vendor shl be deemed to be a pty wall, to be maintained & repaired at the jt expse of the respive owners for the time being of the ppties separated thby.

Property to be at risk of purchaser (*b*).

XXI. The ppty shl as to any damage by fire, tempest, or other inevitable accident arisg after the sale be at the risk of the pchaser, & no claim shl be made agst the vendor for any deterioron or damage from whatever cause, unless occasd by his wilful neglect or default.

Requirements of local authorities as to paving, &c. (*c*).

XXII. In case at any time after the sale & bfe the complon of the pchase, any requiremt or demand shl be made by the Municipal Corporon, Local Board of Health, or other local authority, in respt of any lot, or of the formg, pavg, sewerg, or draing of the roads, streets, or passages adjoing the same, the pchaser shl, on the complon of the pchase, repay to the vendor the amt expended by him in complyg with such requiremt or demand, & in case any such requiremt or demand shl not have been complied with bfe the complon of the pchase, the pchaser shl indemnify the vendor in respt thof; but the vendor shl, upon receivg notice of any such requiremt, inform the pchaser thof, & give him the option of complyg thwith in lieu of the vendor, & shl not expend any moy for that ppose unless the pchaser shl refuse or neglect to comply thwith.

(*a*) See the Customs, &c., Act, 1889, 52 Vict. c. 7, ss. 12–15.

(*b*) See Dart, V. & P. 286; *Clarke* v. *Ramuz*, [1891] 2 Q. B. 456. As to fire insurance, see above, p. 295, note.

(*c*) See p. 259, note (*d*).

Execution of former conveyance by attorney (*d*).

XXIII. In the yr —— a convce of pt of the ppty was exted by atty. No objon shl be made as to the sufficiency of the power of atty, & no proof shl be required that the ppal was then alive, or that the power remained in force.

Execution by attorney (*d*).

XXIV. One of the vendors being abroad, the convces will, as regards him, be exted by atty, & every pchaser shl be satisfied with such exon, & shl assume that such power of atty is valid & subsistg, witht requirg any evidce that such vendor is alive or orwise.

Provision for one of vendors being abroad.

XXV. The este being held in undivided shares, & the owner of one of such shares being resident abroad in ——, if any delay or difficulty occur in obtaing a convce of such share, the pchaser shl retain a proportionate pt of the unpd balce of the pchase-moy, & pay intt thron at the rate of £4 p.c. p.a., until such share shl be duly conveyed.

As to separate conveyances.

XXVI. The ppty [Any two or more lots bought by the same pchaser] shl be assured to the pchaser or his nominees in such pcels & by such convce or convces as the pchaser shl think fit, but any addonal costs occasioned to the vendors by more than one deed of convce being required shl be pd by the pchaser.

Expenses. Stringent (*e*).

XXVII. With the exception of the expse of makg & deliverg the abstract, all expses whatsr (whether occasioned to the vendors or the pchaser) of & incidental to the verificon or complon of the abstract, or the investigon or proof of the title, or the preparon, perusal, exon, & complon of the convce, & any other deeds, & all other costs & chges relatg to the sale shl be borne & pd by the pchaser.

Option to purchaser to take immediate possession.

XXVIII. The pchaser shl be entled to posson on signing the subjoined agrmt & paying the deposit & all outgoings, & shl pay intt at £4 p.c. p.a. on the unpd balce of the pchase-moy from the day of sale up to the day fixed for complon whether he actually takes posson or not, & if from any cause

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(*d*) As to execution by attorney, see the Conv. Act, 1881, ss. 46–48; the Conv. Act, 1882, ss. 8, 9; and p. 201, note.

(*e*) See another stringent form, *infra*, p. 358.

other than the wilful default of the vendor the pchase is not then completed, the pchaser shl pay intt at £5 p.c. p.a. on such balce from that day until complon. In the event of the pchaser takg posson he shl keep the ppty insured agst fire up to three-fourths of its value, & shl not make any alteron thrin witht the vendor's consent until after the complon of the pchase, but such takg of posson shl not be deemed an acceptce of the title, & in the event of the sale being annulled he shl redeliver posson & pay intt as afsd & make good dilapidons arisg durg his occupon, reasble wear excepted, witht makg any claim agst the vendor in respt of his expenditure on the ppty.

Provision for advance of part of purchase-money on mortgage (*a*).

XXIX. If any pchaser shl within seven days after the sale give to the vendor's solor notice in writg of his desire to borrow any portion of the pchase-moy, the vendor will lend or procure to be lent to the pchaser the amt specified in such notice not exceedg —— p.c. of the pchase-moy at intt at £5 p.c. p.a.: the pchaser havg the option of payg off the loan or any pt thof not being less than £—— in any one paymt at any time within —— yrs of the date fixed for complon, condonally on the punctual paymt of intt, such loan & intt to be secd by mtge of the pchaser's lot or lots in the usual mner at the expse of the pchaser, such expse not to exceed £—— for each lot exclusive of stamp duty & of the chges (if any) of the pchaser's own solor, the form of such mtge (if the pties differ) to be settled by counsel to be nominated by the vendor, but this agrmt to advce moy is condonal upon the pchase & mtge being completed within the time appted for the complon of the pchase.

Provision for payment by instalments (*b*).

XXX. Each pchaser, unless he avails himself of the option given by the next condon of payg by instalmts, shl pay the balce of his pchase-moy, &c., *usual condon for paymt, & of intt in case of default*. Upon paymt of the balce of the pchase-moy & intt (if any) as afsd, or upon signg the agrmt for

(*a*) Compare the form, *infra*, p. 377.
(*b*) Compare the form, *infra*, p. 377.

paymt by instalmts as provd by the next condon (as the case may be), the pchaser shl be entled to posson or the rents & profits as from the sd —— day of ——, down to wch time all outgoings shl be pd by the vendor. Each pchaser shl have the option of payg the balce of his pchase-moy by equal half yrly instalmts extendg over a period of —— yrs from the day of sale, with intt at the rate of, &c., on the amt for the time being remaing unpd, provd he shl within seven days from the day of sale deliver to the vendor's solors notice in writg of his desire so to do, togr with a print of the subjoined agrmt (*c*) in that behalf, duly signed

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(*c*) *Form of Agreement annexed.*

Form of agreement.

"Agrmt made the —— day of —— betwn the above-named A., *vendor* (hinafter called the vendor), of the one pt, & B., of, &c. (hinafter called the pchaser), of the other pt, whby it is agrd as follows:—

"1. The pchaser havg pchased lot —— in the annexed parlars & havg pd one-tenth of the pchase-moy, shall be permitted to pay & hby agrees with the vendor to pay the balce of his pchase-moy by nine yrly instalmts of £—— each, with intt at the rate of 5 p.c. p.a. to be pd at the same time on the amt remaing due immedly befe paymt of each instalmt, & the first instalmt, with intt as afsd, to be pd on the —— day of —— & anor instalmt on the same day in each of the succeedg eight yrs, or earlier at the option of the pchaser.

"2. When the whole of the balce with intt & costs (if any) as hinafter provd for shl have been pd the pchaser shl be entld to his convce, & if befe the convce shl have been completed the pchaser shd die or any other event shd happen tending to occasion further costs or expses than would be orwise incurred, the pchaser, or the psons derivg title under him, shl pay all such costs & expses, & the convce is not be exted until they are pd.

"3. The pchaser shl not until he has reced his convce dig or remove from the lot or lots pchased by him any gravel, clay, brick, chalk, stone, or other substce without the con-

by him, with the parlars & these condons annexed, but the pchaser shl have the option at any time of payg off the balce remaing due of his pchase-moy with intt to the day of paymt without any previous notice of his intention so to do. Upon paymt of the balce of his pchase-moy (whether in a gross sum or by instalmts) with intt (if any) each pchaser shl be entled to a convce, &c. If any pchaser shl make default in paymt of the balce of his pchase-moy or any instalmt thof, as provd by these condons or the agrmt to be signed by him under the —— condon (as the case may be), & shl not in all other respts pform these condons & such agrmt (if any), the vendors shl be at liberty, &c., *usual provon for default.*

Disputes to be referred to auctioneer.

XXXI. ANY dispute or diffce arisg either betn any pchaser & the vendors, or betn any of the pchasers, on any mre arisg out of the parlars or plans, shl be left wholly to the auctioneer to determine, who shl also decide how the costs of such refce shl be borne, & his decision shl be bindg on all pties.

As to statements of fact in conditions (*a*).

XXXII. THE statemts of facts made by the vendors in the parlars & these condons are believed by them to be correct, but they shl not be required to adduce any proof thof beyond what is in their posson.

Incorporation of common conditions of provincial Law Society (*b*).

XXXIII. THE sale is subjt to the common form condons of the —— Law Society, but so that in case of varice or inconsistency these special condons shl prevail.

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sent in writing of the vendor, nor shl the land be orwise disturbed except in the ordinary course of cultivon or for bldg ppses. As WITS the hands of the pties."

(*a*) See as to this, 1 Dart, V. & P. 170.

(*b*) See 1 Dart, 139.

VI.

Incumbrances *and* Outstanding Estates, &c.

Payment of legacies and annuities.

1. It shl be assumed that all legacies bequed by a testor, who died —— yrs or upwards bfe the sale, have been pd; & that two anns of £—— & £——, bequed by a testor, who died in the yr ——, have ceased by the deaths of the annuitants or been releed, & that all arrears thof have been pd, *or*, "that all legacies & anns bequed by any testor, who died 20 yrs & upwards befe the sale, have been duly pd & satisfied or ceased, & that there is no outstandg chge or claim in respt thof."

Annuity.

2. The pchaser shl not require any rele, or make any requon or objon in respt of an anny of £——, given by a testor, who died in the yr ——, to a pson who appears from the recital of a deed of covt for paymt of & indemnity agst such anny, dated, &c., to have been then aged ——.

Indemnity against life annuity by investment of fund (*c*).

3. Pt of the ppty sold is with other ppty subjt to a life anny of £——. The vendors will endeavour to obtain a rele from the annuitant; but shd they be unable to do so, of wch inability the statemt of their solor shl be suffit evidce, the pchaser shl be satisfied with the investmt of a portion of the pchase-moy in the pchase in the names of two trees (one to be appted by each pty) of a governmt anny of like amt, or of governmt stk, the divids whof will suffice to answer the sd anny, upon trusts for securg the paymt thof & subjt thto for the vendors to be decld by a deed to be prepared by & at the expse of the vendors, the pchaser bearg the expse of the approval & exon thof on his pt.

Indemnity against family charges (*c*).

4. The ppty togr with other family ppty in the same coy may become, under the marre settlemt of the vendor, subjt

(*c*) See now the useful provision in the Conv. Act, 1881, s. 5 (the machinery of which, however, would often be too expensive); and as to settled estates, the Settled Land Act, 1882, ss. 5, 24 (4, 5, 6); *Re Ailesbury*, 37 Sol. J. 326.

to a life anny of £—— to his wife, if she survives him, & to a chge of £—— for the benefit of chn, but as the other ppty subjt to the chge is of considerable extent, & far exceeds in value any chges wch can thus arise (of wch fact no proof further than appears by the abstract shl be required) the respve pchasers shl not be entitled to require any rele of these chges or to make any inquiries resptg them, but shl be satisfied with the covt of the vendor to indemnify the pchaser & the pchased ppty agst the same [togr with a chge thof on the unsold pt of the ppty in exoneron of the pt sold, & the approprion in the names of three respectable trees to be nominated by the vendor of the sum of £—— £2 15*s.* p.c. consold stock, to be held upon pper trusts (to be decld by a deed to be prepared by & at the expse of the vendor), for securg the paymt of the sd chges, & subjt thto upon trusts for the benefit of the vendor, includg a trust for paymt of the income to him until the same shl be required for meetg the sd chges, & with a power to the trees to transpose the investmt of the fund into any investmts authorised by law for the investmt of trust moy, except mtges in Ireland, & any other pper or usual provons].

Outstanding legal estate.

v. Upon a convce of the ppty in the yr ——, the concurrce of a tree or trees in whom the legal este was outstandg was not obtained. The pchaser shl not require the vendors to procure a reconvce of such legal este, or to trace the devolon thof, or make any requon or objon in relon thto.

The same. Another form.

vi. Any legal este wch may be outstandg shl, if required to be got in, be traced & got in by the pchaser at his own expse.

Satisfaction of old mortgage (*a*).

vii. With the title deeds of lot —— is a mtge for £——, dated, &c., of the satisfon of wch the vendors have no evidce beyond their posson of the mtge deed, but the convce to their testor contains an indemnity agst such mtge. The pchaser of this lot shl assume that the mtge has long since

(*a*) See *Sands to Thompson*, 22 Ch. D. 614.

been satisfied, & shl not make any objon or requon on acct of the absce of a reconvce or receipt for the mtge moy.

Lease not formally surrendered.

VIII. THE vendors have no evidce that a lease of the ppty, wch was granted in 18— for the term of —— yrs from ——, was formally surrendered prior to the grantg in 18— by the predecessors in title of the vendors of a fresh lease thof to anor pson, under wch posson has since been held. The pchaser shl assume that such former lease was duly surrendered, & shl not make any objon or requon in respt thof.

Restrictive covenants (*b*).

IX. LOTS —— are subjt to certain covts & restrons as to buildg, drainage, roads, carryg on trades & other mres contd in a convce in 18— [to the vendor] a copy whof can be seen at the office of the vendor's solors. [The respve pchasers shl covt to observe such covts & restrons & to indemnify the vendor in respt of any psonal liability to wch he may be subjt in respt thof &] no proof shl be required that the same have been observed, *or*, "no objon shl be made on acct of any of such covts & restrons not havg been observed."

Reservations of minerals, &c.

X. THE ppty is sold subjt to the reservons of mines & minls contd or refd to in the sevl documts formg the stipulated commencemts of title [& to such other reservons & liabilities as the same may be subjt to under any enclosure act or award].

Mortgage to two persons, without joint account clause.

XI. BY deed dated, &c., lot 1 & portions of lots 2 & 3 were mtged to two psons for securg £—— & intt, witht any statemt that the moy belonged to them on a jt acct. After the death of one of the mtgees, the survor by deed dated, &c., transferred the mtge to anor pson, & the psonal repves

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Restrictive covenants to be specifically notified.

(*b*) The existence of restrictive covenants should be specially notified: see as to this *Re Gloag*, 23 Ch. D. 320; *Dunn* v. *Flood*, 25 Ch. D. 629; 28 Ch. D. 586; *Ellis* v. *Rogers*, 29 Ch. D. 661; *Nottingham, &c., Co.* v. *Butler*, 15 Q. B. D. 261; 16 Q. B. D. 778; *Re Davis*, 40 Ch. D. 601; *Re Ebsworth*, 42 Ch. D. 23; *Re Cox*, [1891] 2 Ch. 109; and as to restrictive covenants generally, see *infra*, p. 311, note. As to the liability of the purchaser in the absence of special stipulation to give a covenant of indemnity, see 1 Dart, V. & P. 631, 632.

of the deced mtgee did not concur in such transfer. No objon or requon shl be made on this acct.

Conveyance of infants' property (*a*).

XII. On the pchase by the psnt vendor 3 of the psons then entled were infants; their shares of the pchase-moy (amtg to a comparatively small sum) were pd to a tree, who by deed poll undertook to hold the same in trust for the infants on their extg the convce, but in case of default then in trust for the psnt vendor. The convce contns a covt for the exon thof by the infants on their attng 21. One of the infants has since attned that age & has exted the convce & reced his share of the pchase-moy. The pchaser shl stand in the same position as the vendor with respt to the 2 other shares, & shl be satisfied in all respts with the above arrangemt, & take the ppty subjt thto.

Tenant rights.

XIII. The pchaser shl take upon himself & satisfy all the vendors' liabilities to the outgoing tenant by virtue of the lease or agrmt, the custom of the country, or by statute or orwise.

Release of incumbrances.

XIV. No pchaser shl require any incumbce to be dischged orwise than by the incumbcer joing in his conveyce, nor make any claim for costs by reason of the conveyce being thby increased in length or made complicated.

VII.

Missing Deeds, Secondary Evidence.

Want of covenant to produce (*b*).

I. Certn deeds dated, &c. (comprisg other ppty besides the ppty now offered for sale), are not in the vendors' posson, & they have no covt for their prodon. The pson in whose posson such deeds now are will pduce them for

(*a*) See now the Conv. Act, 1881, s. 41, and the Settled Land Act, 1882, ss. 59, 60.

(*b*) See the V. & P. Act, 1874, s. 2 (3): above, p. 254.

examinon with the abstract; & the pchaser may have attested copies at his own expse, but he shl not object on acct of the absce of or require any covt or acknowmt for the prodon of such deeds.

Deeds not relating to title (*c*).

II. In any case in wch any abstracted documt contns any notice of any deed or other documt not abstracted, the pchaser shl accept as conclusive the statement of the solor of the vendors, that the same does not relate to the lot or lots pchased by him; but nevs the vendors will, if required, endeavour to procure the prodon of any such deed or documt for the satisfon of the pchaser at his expse.

Lost deed. Recital evidence.

III. A transfer of mtge, dated in ——, is believed to have been lost many yrs ago, & the vendors have no copy or abstract thof, but the same is recited in a convce dated, &c. No objon or requon shl be made in respt of the loss or non-prodon of such transfer, & the recital thof contd in the sd convce shl be accepted as conclusive evidce of the contents & due exon thof.

The same. General form (*d*).

IV. The pchaser shl not require an abstract or the prodon of any deed or instrumt not in the posson of the vendors, wch is recited or noticed in any abstracted deed, will, or other origl documt, dated —— yrs or upwards prior to the sale, or require any further informon relative thto than appears from the abstract.

Attested copy to be evidence.

V. A mtge, dated in the yr ——, was upon a pchase in the yr —— covted to be pduced by the pson in whose posson the same then was. The vendors, after much search & inquiry, have been unable to discover where this deed now is, but they have in their posson an attested copy thof purportg to have been examined with the origl deed in the yr ——, wch shl be accepted as sufft evidce of the contents & due exon of such mtge, witht prodon of the origl.

As to deeds not forthcoming.

VI. The vendors shl not be required to produce or trace the existce, or show the custody of any deed or instrumt

Stringent.

(*c*) See *Jones* v. *Smith*, 1 Ph. 244; Dart, V. & P. 970.

(*d*) See also General Conditions, p. 262, clause 7.

not in their posson, *or*, "No objon shl be made on acct of the inability of the vendors to trace or procure the prodon of, or the want of a covt for the prodon of any deeds or munimts not in their posson."

VIII.

Land-Tax *and other* Outgoings, Apportionment (*a*).

Exemption from land-tax.

I. A certfe of the redmon of the land-tax, dated, &c., shl be accepted as sufft evidce of such redmon, witht proof of the identity of the lands in respt of wch the tax was redeemed.

The same.

II. No evidce shl be required of the redmon of the land-tax except a certfe or declon of the collector of land-tax, *or*, "the vendors' steward," to be made if required at the pchaser's expse, that the ppty is not now assessed to the land-tax, *or*, "that no land-tax is now [*or*, has for the last —— yrs] been pd in respt of the ppty."

Another form.

Freedom from tithes.

III. The prodon of an office copy of a declon of merger (*b*) by a former owner of the tithe rent-chge shl be taken as conclusive evidce that the ppty is tithe free, *or*, "No pchaser shl be entled to any other proof of the ppty being

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(*a*) As to land subject to chief rents, see p. 337 *et seq.*

Merger of tithes.

(*b*) Under the law before the Tithe Commutation Act, impropriate tithes, notwithstanding unity of ownership, remained distinct from the land, and could not be merged; and they did not pass by a conveyance or devise of the land, unless expressly mentioned (Shelford on Tithes, 292). The same is now the case as regards the commutation rent-charge, unless it is merged under the Acts, *Chapman* v. *Gatcombe*, 2 Bing. N. C. 516; Burton Comp. 381. If, therefore, the tithes, though belonging to the vendor, are unmerged, the land is not accurately described as "tithe free," and the vendor may be bound to merge them at his own expense; but if there was unity of possession at the time of the Tithe Commutation, the land would probably be entered as tithe free. As to merger, see 1 Dart, V. & P. 399, note.

tithe free than is afforded by the tithe apportionmt for the parish of ——, wch shl be examined by the respive pchasers at their own expse."

Exemption from land-tax and tithes.

IV. No land-tax has ever been pd by or claimed agst the vendors, & the tithe rent-chge has been chged by them on other ppty of ample value; & each pchaser shl be satisfied by a declon to that effect, to be made (if required) at the expse of the pchaser, that his lot is free from land-tax & tithe rent-chge.

Quit rents, tithes, &c. Indemnity against.

V. No objon or requon shl be made, or compenson claimed in respt of any quit rent, tithe rent-chge, or other similar liability to wch any of the premes now sold may be subjt togr with other lands, but in respt whof an indemnity has been given, or no paymt made for —— yrs or upward; & the pchaser shl accept a statutory declon as conclusive evidcę of such indemnity or non-paymt.

Apportionment of land-tax, tithes, rents, &c. (c).

VI. The pchaser shl in every case be satisfied with & accept as sufft the statemt in the parlars as to the amt of any land-tax, tithe rent-chge, quit rent, or apportioned pt thof, or other outgoing to wch the ppty or lot or pt of a lot is now subjt, or is for the ppose of the psnt sale to be taken as subjt, & shl not make any objon on the ground of any land-tax, tithe rent-chge, or other outgoing, not being now, or not havg been on a former occasion, legally apportioned, or require the same to be apportioned, or any indemnity agst any pt thof wch ought to be borne by other ppty. As to any ppty or lot wch is sold free from land-tax or tithe rent-chge, the pchaser shl be satisfied with such evidce of its being so free as the vendors may be able to adduce, & shl not make any objon on acct of the tithe rent-chge on any lot sold as tithe free being unmerged. The respive pchasers shl also be satisfied with the arrangemts made by the parlars for the

(c) As to the redemption of quit rents and perpetual rents (other than tithe rent-charge, or rents reserved on sales or on grants for building purposes), see the Conv. Act, 1881, s. 45; as to enfranchisement rent-charges, see the Copyhold Act, 1887, ss. 17, 18; and as to extraordinary tithe rent-charges, see 49 & 50 Vict. c. 54, ss. 5, 6. As to appointment of tithe, see *Re Ebsworth*, 42 Ch. D. 23. Redemption of rents.

apportionmt of the rents payable by the tenants in the case of ppties held by one tenant being separated into two or more lots or pts of lots, & shl not require the consent of the tenants to such apportionmt or make any requon in respt thof. [A legal apportionmt of any land-tax, tithe rent-chge, or other outgoing, or of any rents payable by the tenants, shl, nevs, if desired by any pchaser, be effected by the vendors, as far as circes will admit, & at the expse in all respts of such pchaser, *or*, "at the jt expse of the pchasers concerned thrin," but the complon of the pchase shl not be thby delayed, & the vendors shl, in respt of any unsold lot, for the ppose of this condon stand in the place of the pchaser.]

As to copyhold payments, quit rents, &c.

VII. THE vendors shl not be called upon to furnish any evidce beyond that shown by the munimts or docts in their posson of the rents & services under wch the ppty is held, or what parlar portions of the ppty [respive lots] are subjt to the quit-rents, land-tax, or other outgoings specified in the parlars.

IX.

IDENTITY, QUANTITY, MISDESCRIPTION.

Identity (*a*).

I. THE pchaser shl not require any proof, beyond what is afforded by the munimts themselves, of the identity of the ppty with that descd in any of the munimts [prior to a convce in the yr ——], or for distinguishg the portions held under the different titles.

The same

II. THE vendors will, if required, but at the expse of the pchaser requirg the same, furnish or procure such evidce or informon as may be in their power, for the ppose of identifying any lot or pt of a lot as descd in the parlars with the descriptions contd in the munimts, or of reconcilg or

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(*a*) See Dart, V. & P. 175, as to the sufficiency of this condition.

connectg the quantities or descriptions where the same differ; but no requon for any such ppose or orwise connected with the identificon of the pcels shl be persevered in by any pchaser, after the vendors or their solors shl have decld their inability to comply thwith; & the title to any lot or pt of a lot shl not be objected to in respt of any such defect of proof of identity or any failure to define the pts of the ppty held under difft titles, but the pchaser shl in that case be entled to a declon, to be made at his own expse, that the pchased ppty has been held in conformity with the title as deduced for —— yrs & upwards.

Quantity. III. The contents & dimensions of the ppty as stated in the parlars & plan havg been taken from an actual survey, are believed & shall be taken to be correct, although the same may differ from the results of other surveys, or from the contents mentd in some of the munimts [*or*, the quantities contd in the book of referce to the ordnce map (*a*) for the sd parish of ——.]

Identity and quantity. IV. No objon shl be taken on the ground that any of the old descriptions & measuremts do not accord with the psnt state of the ppty, as shown in the parlars & plan.

Identity. Various stipulations. V. Various alterons havg taken place by the removal of fences, enclosures, change of names, & orwise, the vendors shl not be required to identify or connect any pt of the ppty sold with the descriptions contd in any of the abstracted munimts, nor to acct for any apparent variance as to quantity, abuttals, or orwise, nor to explain or reconcile any apparent diffces in the abstracted descriptions, nor to distinguish the psnt or former copyhd pt of any lot from the freehd pt thof, or the pts held under different titles.

Misdescription. VI. Any misstatemt or omission in the parlars shl not annul the sale, & as the premes may be viewed, such misstatemt or omission, if discoverable by inspon, shl not be the subjt of compenson, but if the same be not so discoverable a reasble abatemt or compenson shl be made, &c., *see* Genl Condons, pp. 267, 268.

(*a*) As to the Ordnance Survey, see Elph. Introd. Conv. 95.

X.

Reservations (*a*).

Right of way.

1. The sale [of lot ——] is subjt to a right of way, road, or passage [of the width of —— feet] for all ppses, *or*, "for foot passengers," *or*, "for the owners & occupiers of lot —— & their families & servants, & others, with or witht horses & other animals, carts, carriages, & other vehicles," *or*, "for the ppses for wch the same is now used," *or as the case may be*, to be reserved or grted to the vendors, *or*, "to the pchaser of lot —— if sold, or if not to the vendors," betn the points marked A & B on the plan, *or*, "to & from lot —— as shown in the sale plan," & the convce shl be framed accdly, [& in case of diffce as to the mode of effectg such reservon or grt the same shl be settled by the vendors' counsel].

Sale of surface without mines (*b*).

2. The vendors reserve to themselves the mines, beds, & quarries of coal & ironstone, & other metals, stone, & minls within & under the whole of the ppty, with all necy or pper powers, rights, & easemts for searchg for, winng, workg, gettg, & carrying away the same whether by underground or surface workgs, [but not so as to let down the surface whether built upon or not], pper compenson being pd to the pchasers for all damage done to the surface or the bldgs thron, & for the occupon of the surface in or about the exercise of such rights & powers (*c*); & subjt to the

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As to sales subject to reservations.

(*a*) See also Conveyances on Sale, Parcels and Reservations. As to the power of limited owners to sell subject to reservations, see the Settled Land Act, 1882, s. 4 (6), s. 17 (1). For a form of reservation to the vendor of the right to build on adjoining land so as to exclude any implied grant of an easement of light, see Contracts for Sale, p. 382.

As to sale of surface without mines.

(*b*) As to the right to support, see *Love* v. *Bell*, 9 App. Cas. 286. As to the power of trustees to sell the surface without the mines, see 25 & 26 Vict. c. 108 (passed in consequence of *Buckley* v. *Howell*, 29 Beav. 546); and the Settled Estates Act, 1877, 40 & 41 Vict. c. 18, s. 19.

(*c*) As to the condition for compensation being enforceable against the assignees of the vendors, see *Aspden* v. *Seddon*, 1 Ex. D. 496.

obligon on the pt of the vendors to restore the surface when the mines or minls shl have been worked out, or permamently ceased to be worked, & the convces shl be framed accdly [& in case, &c., *as in last form*].

III. The coal & ironstone & other mines & minls (except only marl, gravel, & sand wch can be got witht going under or passg through any seam or vein of coal or ironstone) are reserved out of the psnt sale, with full power for the vendors & all psons claimg under them to sink any pits or shafts, or to erect or construct any bldgs, engines, machy, roads, tramways, waterworks, waterways, airways, or other works or conveniences necy or desirable for the ppose of gettg, workg, carrying away, convertg, or disposg of such mines & minls, or for any ppose connected thwith, & to stack & lay up any minls & refuse wch may be raised out of any such mines, makg all reasble compenson to the surface owners & occupiers for the time being for such damage as may be done in the course of gettg & workg such mines & minls, & the convces shl be framed accdly [& in case, &c., *as in form* I.]. The same. Another form.

IV. The vendors reserve the right to gather in & sell the growg crops & fruits at any time bfe the pchaser is let into posson. Right to get in crops.

XI.

Restrictions *as to* Building, Maintenance *of* Roads, &c. (*d*).

I. The sevl lots [*or*, Lots —— to —— inclusive] are sold & will be conveyed subjt to the followg condons & Sale subject to restrictive

(*d*) It may be taken as now established that at law the burden of a covenant between vendor and purchaser as to the user, &c., of land (unless operating as a grant), never runs with the land so as to affect a purchaser As to the burden of restrictive

stipulations. stipulons for the benefit & proton of the ppty sold & the

covenants running with the land.

from the covenantor; *Austerberry* v. *Oldham Corporation*, 29 Ch. D. 750, where the previous authorities were fully examined; 1 Smith's L. C., notes to *Spencer's Case*, 9th ed. 104. But in equity a restrictive covenant (*i.e.*, one of a negative or prohibitory nature, such as against building on the land or carrying on objectionable trades, &c.), as distinguished from affirmative covenants (such as to erect or maintain buildings), will be binding on purchasers (including of course lessees) taking with notice (*Tulk* v. *Moxhay*, 2 Ph. 774); which notice may be constructive only, as to which the law is not altered by the enactment as to constructive notice in the Conv. Act, 1882, s. 3, see sub-sec. (2); and such notice will be implied against a purchaser or lessee who neglects to make or debars himself by the contract from making the usual examination of title (which if made would have brought to light the restriction), *Patman* v. *Harland*, 17 Ch. D. 353; *Nottingham Brick Co.* v. *Butler*, 16 Q. B. D. 778; *Re Cox*, [1891] 2 Ch. 109. Negative covenants of this nature are not open to objection on the score of perpetuity (*L. & S. W. R. Co.* v. *Gomm*, 20 Ch. D. 562; *Mackenzie* v. *Childers*, 43 Ch. D. 265), nor as being in restraint of trade (*Catt* v. *Tourle*, 4 Ch. 654; *Earl of Zetland* v. *Hislop*, 7 App. Ca. 427; 2 Dart, V. & P. 865). It is proper that the covenant should in point of form be entered into by the grantee to uses or owner of the legal estate, and should be expressed to bind his assigns, though the obligation of the covenant as attaching in equity on future purchasers with notice does not turn on technical considerations such as this, but on the general intention as evidenced by the deed; see *Re Fawcett*, 42 Ch. D. 150, where the covenant was held to be merely personal, and therefore not binding on a subsequent purchaser.

Suggested expedients for making covenants bind the land.

It has been suggested that section 62 of the Conv. Act, 1881 (by which the Statute of Uses was extended so as to enable easements and other rights in or over land to be created by way of limitation of the use, as to the need for which see 3 Dav. Prec. 1217, note), might possibly be made available as a means of converting a right under a restrictive covenant into a legal right, so as to be enforceable even against purchasers without notice; this experiment might be tried without harm, and possibly with success, since, according to the view of such covenants expressed by Jessel, M. R., in *L. & S. W. R. Co.* v. *Gomm*, 20 Ch. D. 583 (and see 2 Dart, V. & P. 863), if that enactment would apply to the case, the defence of "purchase for value without notice" could no longer be set up as a defence. Another suggestion which is stated (Challis on Real Property, 306) to have been acted on in practice, is that a long term should first be created burdened with the covenants, and then be enlarged into a fee under the Conv. Act, 1881, s. 65, so that the covenants may attach on the fee under sub-s. (4). This, however, though probably effectual, is somewhat cumbrous.

As to the benefit of such covenants.

As regards the devolution of the benefit of a restrictive covenant, it seems that at law it is necessary that the person claiming the benefit should be "in of the same estate" as the original covenantee, so that if that estate has been defeated by an appointment under an overriding

adjoing este of the vendor in ——, & the psnt & future

power, the covenant could not be sued upon at law by the appointee (1 Smith's L. C. 89, referring to *Roach* v. *Wadham*, 6 East, 289); but that this technicality would not be regarded in equity where it is opposed to, and would defeat the manifest intention of the parties seems clear; such questions, however, should of course be avoided by making the covenant with the grantee of the legal estate in fee, so that the benefit of the covenant may go at law with that estate to all persons to whom it may pass, whether by conveyance or the Statute of Uses; and it should be expressed to extend to the "heirs and assigns" of the covenantee (unless those words are omitted in reliance on the Conv. Act, 1881, s. 58). The property of the vendor for the benefit and protection of which the covenants are imposed should be defined; and even then it may be a question whether a subsequent purchaser from the vendor of all or part of the land retained by him is entitled to the benefit of the covenant unless such benefit was expressly included in his conveyance (*Renals* v. *Cowlishaw*, 9 Ch. D. 125, 11 Ch. D. 866; *Everett* v. *Remington*, [1892] 3 Ch. 148).

As to the right of other purchasers to enforce covenants.

The question whether contemporaneous or subsequent purchasers of parts of a building estate are entitled to enforce such covenants against other purchasers depends on the intention, which is to be gathered from all the circumstances in each case, as to whether the restrictions are imposed merely for the benefit and protection of the vendor himself (as in *Keates* v. *Lyon*, 4 Ch. 218, and *Renals* v. *Cowlishaw*, *ubi sup.*), or for the common benefit of the purchasers (as in *Mann* v. *Stephens*, 15 Sim. 377; *Western* v. *Macdermott*, 2 Ch. 72; *Coles* v. *Sims*, Kay, 56, 5 De G. M. & G. 1; *Nottingham, &c., Co.* v. *Butler*, 15 Q. B. D. 261; 16 Q. B. D. 778; see also *Martin* v. *Spicer*, 34 Ch. D. 1; affirmed *sub nom. Spicer* v. *Martin*, 14 App. Ca. 12, approving *Renals* v. *Cowlishaw*, *ubi sup.*; *Tucker* v. *Vowles*, [1893] 1 Ch. 195); see the statement of the law by Wills, J., 15 Q. B. D. 268, approved by the Court of Appeal (16 Q. B. D. 778), in *Nottingham, &c., Co.* v. *Butler*; and see also *Collins* v. *Castle*, 36 Ch. D. 243; *Re Birmingham, &c., Co.* [1893], 1 Ch. 342, where the vendor as to the unsold lots was held bound by the scheme, *Tyndall* v. *Castle*, W. N. 1893, 41; 2 Dart, V. & P. 865, *et seq.* The vendor in such a case may not be in a position to release or modify any of the restrictive covenants stipulated to be entered into by the different purchasers (see *Western* v. *Macdermott*, 1 Eq. 499; *Martin* v. *Spicer*, *ubi sup.*; *Re Birmingham, &c., Co.*, *ubi sup.*) unless the right to do so is expressly reserved by the conditions, which may sometimes be desirable. As to the effect of a lot sold subject to such covenants being afterwards split, see *King* v. *Dickeson*, 40 Ch. D. 596. As to the vendor of an estate being bound by recitals contained in a deed of mutual covenants entered into by several purchasers, see *Mackenzie* v. *Childers*, 43 Ch. D. 265. As to the extinguishment of such covenants, by the alteration of the character of the estate, see *Duke of Bedford* v. *Trustees of British Museum*, 2 M. & K. 552; *Sayers* v. *Collyer*, 24 Ch. D. 180, 28 Ch. D. 103. As to restrictive covenants or conditions affecting copyholds on enfranchisement, see the Copyhold Act, 1887, s. 8.

owners, lessees, & tenants from time to time of such ppty & este, (*a*) namely:

Walls and fences.

a. (1) Every pchaser shl forthwith make & for ever maintain pper boundary walls or substantial [oak] fences on his lot on the sides marked —— on the sale plan [of such height & design as shl be prescribed by the vendor].

The same.

Limit as to height.

a. (2) No wall or fence agst a road (except walls or fences now existg) shl exceed —— ft —— inches in height from the surface of the road or footpath.

The same. Another form.

a. (3) The pchaser [of each lot] shl forthwith erect & for ever after maintain at his own expse a good & sufft divon or pty fence [consistg of a wall or oak park paling of not less than 5 feet or more than 7 feet in height] on the sides of

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As to the validity of a perpetual power of re-entry on breach of such a covenant, see *infra*, p. 335, note; and see generally, as to covenants of this nature, 1 Smith's L. C., notes to *Spencer's Case*, 87, *et seq.*

Tenants for life and other limited owners selling under the Settled Land Act, 1882, are empowered by s. 4 (6) to impose restrictions as to user by covenant, condition or otherwise either on the land sold or the land retained.

As to affirmative covenants.

It is now settled that the doctrine of *Tulk* v. *Moxhay*, applies only to negative covenants which may be enforced by injunction, and that an affirmative covenant (*e.g.*, to maintain buildings), unless it amounts to the grant of an easement or rent or other estate in the land (as in *Rowbotham* v. *Wilson*, 8 H. L. Ca. 348), although it may be valid and binding for all time as against the covenantor personally and his estate after his death (see *Witham* v. *Vane*, Challis, R. P. App. V., pp. 401, 413, 419), is not enforceable as against purchasers from him, even with notice, by action either for specific performance or damages: *Haywood* v. *Brunswick Building Society*, 8 Q. B. D. 403; *L. & S. W. R. Co.* v. *Gomm*, *ubi sup.*; *Austerberry* v. *Oldham Corp.*, *ubi sup.* This question being chiefly important in connection with sales on chief rent is considered *infra*, p. 334, in dealing with that subject.

It has been decided, in *Guardians of Tendring Union* v. *Dowton*, 45 Ch. D. 583, that a charge for the expenses of street improvements by a local authority under the Public Health Act, 1875, is an overriding charge on the whole proprietorship, and may be enforced by a sale of the premises charged free from restrictive covenants entered into by the owner as to building.

For a condition where the land is subject to restrictive covenants in a previous conveyance, see above, p. 303; and see also Conveyances on Sale.

(*a*) As to defining the property for the benefit of which the restrictions are imposed, see last note. It is often more convenient to insert the restrictive stipulations in the particulars of sale.

the premes [on one side of his lot] within the boundary line marked T on the plan, & also a fence in front of & to septe the same from the footpath of —— road [the road or street adjacent thto as shown on the plan], such last mentd fence to consist of dwarf walls with footgs of stone, or iron curb & iron palisadg, with piers, gate piers, & gates, or of close park paling and swing gates, agreeably to a [uniform] design, to be approved of by the vendor [provd that if one pson pchases 2 or more adjacent lots, it shl not be necy to make or maintain any divon or pty fence or wall for the ppose only of separatg such lots from each other]. In case any pchaser makes default in erectg or repairg such fence or wall within —— days after notice in writg so to do shl have been given to him by the vendor, or left for him on his land, the vendor shl be at liberty to erect or repair the same at the expse of the pchaser, the amt whof shl be pd on demand made or left as last afsd.

Buildings.

b. (1) The pchaser shl within —— calr months from the date of his conveyce, at his own cost, and under the inspon & to the satisfon of the architect or surveyor of the vendor, erect & finish, in a good, substantial & workmanlike mner, upon each of the plots of ground included in the sale, one dwg house of the cost of £—— at the least, upon the same plan, of the same form & dimensions, and after the like mner as the houses now already erected on the east side of the road coloured —— on the plan.

To erect buildings of a uniform kind.

b. (2) One house only, of the cost of £—— at least, shl be erected on each plot, such cost to be exclusive of any stabling & outbldgs.

The same.

As to number and value of houses.

b. (3) Every pchaser shl within —— months of the sale erect & finish on his lot on the site coloured red on the sale plan in accordce with plans and elevons to be approved by the vendors or their surveyor, & for ever thrafter maintain in good repair substantial dwg houses with suitable outbldgs & conveniences of the value of at least £—— each, *or*, "of a clear yrly value for lettg or occupon of at least £—— each," *or, if sale is on chief rent*, "of a total value of at least double

The same.

Another form.

the value calculated at 25 yrs' pchase of the rent chged on such lot."

The same. Another form.

b. (4) ONE house only, of the cost of at least £——, or two semi-detached houses only, of the cost of at least £—— each, and in all respts accdg to plans & elevons to be approved of by the vendor's surveyor, shl be erected on the premes [on each of the lots nod. resply on the plan from —— to ——, both inclusive], but stablg or other outbldgs, accdg to plans & in situons to be approved of by the sd surveyor, may be erected on the premes [on any of such lots].

The same. Buildings not to abut on roads.

b. (5) No bldg or erection except the sd fence [a boundary fence not more than —— ft high, made of materials & of a design to be approved of by the vendor], shl at any time be erected on the premes [on any of the sd plots] within —— ft of —— road [any of the roads or streets marked on the sd plan].

The same. To keep building line.

b. (6) THE front wall of any house or bldg to be erected on any pt of the premes shl range & be in a line with the bldg line marked on the plan, and no bldg or erection of any kind exceptg verandahs, porches, bay windows, or similar structures (*a*), to be approved of by the vendor's surveyor, & exceptg such boundary fence as afsd, shl be erected on any portion of the premes [of any plot] wch lies betn the bldg line & any of the roads or streets marked on the sd plan.

The same. Another form.

b. (7) THE line of frontage of the bldgs on the respive lots shl not approach nearer to any of the roads than the line marked "bldg line" upon the plan exceptg porticoes & bay windows or other similar structures, wch shl not project more than —— ft beyond such line, & no bldg other than walls & fences under 7 ft in height shl be erected nearer to any of the roads than —— ft.

The same. As to temporary buildings.

b. (8) No temporary bldgs of any kind shl at any time be erected on the premes [any plot], other than sheds & work-

(*a*) See *Lord Manners* v. *Johnson*, 1 Ch. D. 673.

shops to be used only for works incidental to the erection of permanent bldgs thron.

b. (9) No [permanent] bldg shl be erected on the premes [any plot except the plot nod. —— on the sd plan] except a private dwg house & the stablg, offices, & outbldgs thof, & no bldg erected thron shl at any time be used except for the pposes last afsd. The same. Not to erect buildings, except private dwelling house.

b. (10) For the pposes of these condons [regulons] the cost of every house & other bldg shl be taken to be the net first cost thof, in labour & materials alone (exclusive of ornamental fittgs) to be estimated by the sd surveyor at the lowest current prices. The same. As to cost of buildings.

b. (11) No dwg houses or other bldgs shl be erected on any lot unless the plans, drawgs, & elevons thof shl have been previously submitted to & approved of in writg by the vendor. The same. Plans to be approved by vendor.

b. (12) No new bldg & no addon to any existg bldg shl at any time be erected on the land, except in a position & accdg to plans & descriptions to be previously approved in writg by the steward for the time being of the manor of ——, or in case such manor shl cease to exist or shl come to be held by an owner other than the vendor or his descendants, then by the surveyor for the time being of the Local Board or correspondg public authority of ——, but such approval shl not be withheld unless the erection of such new or addonal bldg shl have the effect of materially obstructg views now enjoyed from other ppties in the manor, or lessening the amenity of such ppties by being unsightly or inappropriate to the site eir in respt of position, number, size, or value. A reasble fee, not exceedg —— guineas may, on each occasion, be chged by such steward or surveyor for his trouble. The same. Another form.

c. No dwg houses shl be erected on any pt of the land so as to stand back to back, witht yards or gardens of a depth of at least —— ft intervening betn them, nor with their backs abuttg on any street. As to yards or gardens.

d. (1) No windows, lights, doors, or openings shl be placed on the —— side of any bldgs erected on the land. Windows, &c.

The same. Another form.

d. (2) No openings, lights, or windows shl be put in any bldg or wall already erected or hrafter to be erected on the land, so as to give or open upon the adjoing ppty within a distance of —— ft thfrom.

The same. For securing privacy of vendor's premises.

d. (3) For protectg the privacy of the house & premes now in the occupon of the vendor, no window or opening shl at any time be made on the south or east side of any bldgs wch may be erected on the land now sold so as to overlook such house & premes, or any pt thof.

Party-walls.

e. (1) The walls to be erected on the —— sides of lots —— as shown on the sale plan shl, for the entire length thof, be pty walls built as to one half thof on the land of ——, & as to the other half thof on the adjoing land of ——, & shl be —— inches thick up to a height of —— feet, & —— inches thick above that level, & shl be erected by & at the cost of ——, but shl be the jt ppty & exist for the jt benefit of the owners of the bldgs separated thby, who shl resply have all the rights & be subjt to all the obligons incident to owners of adjoining bldgs separated by pty walls (*a*).

The same. Another form.

e. (2) All main or boundary walls or fences betn the premes sold & the adjoing ppties wch now are jt or pty walls (*a*) or pty fences, shl continue to be such, & shl be so used, repaired, & maintained.

The same. Another form.

e. (3) The gable & wall on the —— side of the house, into wch the main timbers of each immedly adjoing house are laid or inserted, and the walls in the rear & front by wch each such house & the land set apart & appropriated for each house so adjoing are separated, shl at all times hrafter be considered as pty walls (*a*) with all the rights & privileges that attach thto.

As to user of premises.

f. (1) No bldg to be erected on any of the lots [except lots —— & ——] shl at any time hrafter be used for any

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As to party walls.

(*a*) If appropriate, add: "that is to say, walls of wch the adjoing owners for the time being are tenants in common." As to the ambiguity of the phrase "party walls" without explanation, see Elph. N. & C., Interp. of Deeds, 606.

other ppose than a private dwg house or a coach-house & stables & outbldgs belonging thto ; & no trade, manufacture, or business of any kind [except that of a surgeon or physician] shl at any time be set up or carried on in or upon any of the lots [except as afsd].

f. (2) NEITHER the land nor any existg or future bldg thron shl be used for carrying on any trade or business, nor as a school, hospital, or public institon or charity, nor for holdg public meetgs, nor for public worship, nor orwise than as a private dwg house, but this shl not preclude the reception of lodgers or boarders, nor the carrying on of a learned or artistic profession witht other outward indicon thof than a brass or other plate or inscription coverg the space of not more than 2 feet by 1 foot. The same. Another form.

f. (3) THE premes or any bldg thron shl not [None of the lots or any bldg thron shl] at any time be used for the ppose of any trade, manufacture, or business (*b*) of any description, or anything in the nature thof, or havg the appearce or show thof, or as an asylum, hospital or other charitable institon, or by any public body or society, or as a chapel or school, or as tea-gardens or a hotel, public-house, or tavern, or for the sale of beer, wine, or spirits, or as a place of public amusemt, entertainmt, or resort. The same. Another form.

f. (4) NO hotel, tavern, tea-gardens, manufactory, mill, gasworks, hospital, asylum, or shop (*c*) shl at any time be erected, opened, or carried on upon any of the lots, & no spirituous or fermented liquors shl be sold in or upon any of the lots, or in any bldg to be erected thron. The same. Another form.

f. (5) THE plot nod. —— on the plan, wch has been set apart for an inn, hotel, or public-house, shl not be used for The same. As to plot reserved for hotel.

(*b*) As to a charitable institution, from which no profit is derived, being included in the term "business," see *Rolls* v. *Miller*, 25 Ch. D. 206; 27 Ch. D. 71.

(*c*) The enumeration of particular objectionable trades, &c., though common, is necessarily not exhaustive, and if general words are added, as in form *f.* (6), there may be some risk of the *ejusdem generis* doctrine being applied; see *Jones* v. *Thorne*, 1 B. & C. 715. Objectionable trades.

any other ppose, except that, with the licence in writg of the vendor, the same may be converted into a private dwg house: *add provons as to plans, costs, &c., see above forms.*

The same. Not to carry on offensive trades, &c.

f. (6) NONE of the lots or any bldg to be erected thron shl be used for any offensive, noisy, or dangerous trade, business, pursuit, or occupon, or any ppose wch shl or may be or grow to be in any way a nuisance, damage, grievce, or annoyce to the vendors, their hrs or assns, or their tenants, or to the owners or tenants of any of the adjoing ppty or the neighbourhood, or wch may tend to depreciate or lessen the value of the afsd este of the vendors, or any pt thof, as a residential ppty (*a*).

The same. Another form.

f. (7) No bricks or tiles shl at any time be made, nor any clay or lime burnt on the premes [on any lot], & no operative machy shl at any time be fixed or set up thron, or in any bldg to be erected thron, & no manufacture or operons of a noisome, offensive, dangerous, or noisy kind shl be carried on in or upon the same, nor shl anything be done thron wch may be or grow to be a nuisance or annoyce to the vendor or his tenants, or the neighbourhood.

To form passage.

g. LOTS —— are sold subjt to the obligon on the pt of the pchasers to leave open & unbuilt upon a passage or space —— feet wide as shown on the sale plan, & each pchaser shl pay one-half of the cost of formg, sewerg, pavg, completg, repairg, & maintaing such passage, so far as the same is co-extensive with his lot.

As to making and maintaining roads.

h. (1) EVERY pchaser shl, accdg & in proportion to the extent of his frontage towards the projected street or road delineated in the plan, contribute, with the owners for the time being of the other lots comprd in this [& a former] sale & havg such frontage, to the expse of makg & formg the sd projected street into a road pperly metalled & fit for carts, waggons, & carriages, with a flagged footway ——

Annoyances, though not nuisances at law.

(*a*) That this condition, which is meant to extend to "annoyances," though not constituting nuisances in law, and whether they affect the vendor and his tenants or strangers, will be effectual, see *Tod-Heatly* v. *Benham*, 40 Ch. D. 80.

feet wide on each side thof, & with a cover for the water-course at the side thof, & such main sewers or drains under the same as shl be required to be made by the Local Board or other competent authority [*or*, pper main sewers or drains under the same at the lowest level that can be made in order to obtain a suitable & sufft fall], & shl at all times thrafter until the same shl be adopted as a public highway, contribute in the proportion afsd towards the expse of repairg & maintaing the same street or road, a right of way over wch is included in the sale of each lot [& the sd sewers or drains].

h. (2) EACH pchaser shl, at his own expse, level, form, & pave one equal half pt in breadth of the sd street intd to be called ——, so far as the same shl be co-extensive with his lot, & shl also pave with flags a footpath of the breadth of —— feet in front of all bldgs to be erected on & co-extensive with his lot, & shl for ever thrafter maintain such half pt of the sd road & the footpath adjoing the same in good repair & condon until the same shl be adopted as a public thoroughfare. The same. Another form.

h. (3) THE pchaser [The owner or owners of each plot] shl at all times hrafter when required by the vendor, pay to him or contribute an equal or proportionate share with the owners of the other houses & land [plots] adjoing the [intd] roads marked on the sd plan, accdg to the extent of their respive frontage to such respive roads [*or*, accdg to the prices pd by them for their respive plots], of the expse of [makg] repairg, cleansg, & maintaing, to the satisfon of the vendor, the sd roads & pper sewers & drains under the same, & all other expses connected thwith, until the same resply shl be adopted by & taken into the chge of the parish or local authority [such share or proportion in case of dispute to be settled by the surveyor for the time being of the vendor]. The same. Another form.

h. (4) THE pchasers of the plots nod —— to —— inclusive on the sd plan shl, at their jt & equal expse, forthwith make & for ever after maintain the road marked —— on The same. Another form.

the sd plan, & shl, at the like expse, curb, flag, & maintain the footpath on the side thof, of —— feet wide as marked on the sd plan, & such road & footpath shl be for the exclusive use of the owners of the sd plots & their friends, visitors, servants, & others going to or coming from the houses to be built on the sd plots, & shl not be dedicated to the public witht the consent of the owners of all such plots, & no waggon or heavy cart shl be allowed to pass over the sd road, except betn the hours of 6 & 10 in the forenoon.

As to making sewers, &c.

i. THE vendor shl be at liberty at any time to lay down & construct sewers, drains, & water-pipes on any of the lots, & to keep in repair & maintain the same for the genl convence of the este.

Trees and shrubs not to obstruct view.

j. No trees or shrubs shl be allowed to grow upon the land to such a height or density as materially to obstruct views at psnt enjoyed from any other ppties in the sd manor, *or as the case may be.* [Any question betn the pchaser or those claimg under him on the one hand & the vendor or the owners or occupiers of any such other ppty on the other hand as to whether the view from any such ppty is materially obstructed shl be refd to arbitron, & whatever the arbitrors or umpire shl direct with respt to any such trees or shrubs or orwise in the premes shl be done accdly.]

Arbitration (*a*).

As to quarrying stone.

k. No stone shl be quarried on or from the land except for the ppose of preparg for authorised bldgs, or of laying out or adaptg the ground as garden or pleasure ground.

As to sand and gravel.

l. No sand or gravel shl at any time be excavated or dug out of the land [any of the lots] except for the ppose of laying the foundations of the houses or outbuildgs to be erected thron, or for use in erectg such bldgs, or in the gardens or grounds thof.

As to training fruit-trees.

m. THE vendor shl have liberty to nail fruit trees & plants agst any fence [*or*, wall] wch may abut on his land, he, at his own expse, repointg such wall on the side next to his land when necy.

(*a*) See Arbitration Act, 1889, 52 & 53 Vict., c. 49, *ante*, p. 167.

II. The sale & convce of each lot will include the moiety abuttg thron of the site of the proposed road & footpath frontg the same, togr with the rt to use, in common with all other psons havg a rt to do so, the roads or intd roads & footpaths delineated in the plan in the courses there shown, but witht any rt on the pt of the pchaser to require the prodon of or make any objon or requon in respt of the title to any of the sd roads or projected roads, except the pt comprd in this lot, & each convce shl be made subjt to an exception or reservon of a rt of way for the vendors & other psons at all times & for all pposes to the other ppty now offered for sale & adjoing any pt of such roads or intd roads & footpaths resply, & of the rts necy for makg & completg the sd roads & footpaths or incidental thto, & of the rt of makg sewers, laying water-pipes & gas-pipes, & orwise using such roads & footpaths in the mner & for the pposes in & for wch public roads or ways in towns are commonly used; & each pchaser shl, in his convce, covt with the vendors, within —— calr months, at his own expse, & with pper materials, & in a pper mner, & to the satisfon of the vendors' surveyor, to make & form into a road & footway, fit for traffic, such pt of his lot as is shown in the sd plan as pt of a projected road, & until such road & footway shl be adopted by the parish, or local authority, to keep in repair & maintain, fit for the traffic usually passg over the same, the portion thof included in his convce, or to contribute a due proportion, accdg to his frontage, of the cost of the repairs & maintce thof, but the vendors will not enter into any

Provision as to roads and footpaths where the sites are included in the conveyances (*b*).

(*b*) In order to secure to the vendor the full control and proprietary rights over the roads, it is sometimes better to exclude them from the sale, as in the following form:—"The sites of the streets or roads or intd streets or roads, as shown on the sale plan are not included in the sale, but are to remain vested in the vendor, subjt to the necy rts of way & drainage over or through the same, & the sewers to be made thereunder wch are to be secd to the pchasers, & the convces shl be framed accdly."

Sites of streets, &c., excluded from sale.

covts or agrmts with the respive pchasers as to the sd roads or intd roads & footpaths, & shl not be bound to enforce, &c., *as in Form III.*

Restrictive covenants to be entered into by purchasers on sale in lots.

III. As regards every lot, in respt of wch restrons or liabilities are by these condons or the parlars imposed on the pchaser in regard to the erection of bldgs, the makg & maintaing of roads or fences, the user of the ppty, or orwise, the assurce of such lot (*a*) shl contain full & pper covts & provons to be entd into by & at the expse of the pchaser, framed so as to bind his repves & assns, with the vendors, their hrs & assns, the owners from time to time of the —— este, for securg the observce & pformce of such restrons &

(*a*) The following form (or form IV., *infra*) restricting the personal liability of the purchasers under the covenants to the period of their ownership (*Williams* v. *Hathaway*, 6 Ch. D. 544), may be substituted here, and it is perhaps preferable, especially as the liability to enter into unrestricted covenants (to which the vendor would be entitled in the absence of express stipulation; *Pollock* v. *Rabbits*, 21 Ch. D. 466) might be an obstacle in the way of trustees purchasing:

Provision restricting personal liability of purchasers under covenants.

"Shl contain all such reservons, covts, & provons as the vendors' counsel shl deem necy or pper for givg effect to such restrons & liabilities, & ensurg that the obligon thof shl at all times hrafter devolve with the ppty sold, & be bindg on the pchasers, & all future owners & occupiers thof, but such covts and provons shl be framed so as not to impose on the respive pchasers & their hrs, exs, & ads resply any psonal liability, after their respve este or intt in the ppty shl have ceased or determined."

The following is a form where the obligations involve money payments; see as to this, *infra*, p. 334, note (*d*):

Form making money payments a charge.

"The due pformce & observce of the obligons to wch each lot is subjt as afsd, shl be secd to the vendors' reasble satisfon by a pper covt to be intd into by the pchaser with the vendor, or other pper provons to be inserted in the convce, & as regards any moy paymts by reservg the same as rent, or orwise makg the same a chge on the lot, so that such obligons may be bindg on & enforceable agst the pchaser & his successors in title."

liabilities (*b*) (the form of such covts & provons to be settled in case of dispute by the vendors' counsel), [*or*, For the ppose of effectg the objt of the above condons as regards the restrons & liabilities to be imposed on the respve pchasers with respt to bldg, &c., a deed of covt has been prepared by the vendors' solors wch is to be exted by the vendors & by the respve pchasers, & will be retained by the vendors, & the costs attendg the preparon & exon of such deed are to be borne by the pchasers in equal shares] but the vendors shl not be bound to enforce or effectuate the above condons or the liabilities mentd thrin further or orwise than by compellg every such convce to be made subjt [*or*, such deed of covt to be exted] as afsd [& the vendors shl be entled to a duplicate of each convce to be prepared by & at the expse of the pchaser (*c*)].

The same.

Another form referring to particulars.

IV. EACH pchaser shl in his convce enter into a pper covt framed so as to bind his repves & assns [but limitg the psonal liability thrunder to the period of ownership] with the vendors, their hrs & assns, the owners from time to time of the —— este, to observe the stipulons mentd in the parlars relatg to bldg & other mres: And the vendor shl be entled to a duplicate of each convce to be prepared by & at the expse of the pchaser (*c*).

The same.

General form of conveyance.

V. To show distinctly to intendg pchasers the nature of the covts & clauses wch the vendors will require to be inserted in the sevl convces, a genl form of convce has been prepared, & may be inspected at the office of the vendors' solor for —— days previously to, & will be produced at the sale, & every pchaser shl be deemed to have full notice of all the clauses & provons of such form, & to have consented thto, & shl take his convce in accordce thwith, with such modificons, if any, as the special circes of his lot or lots may render necy: And any pchaser may, upon applicon to the

(*b*) See *Haywood* v. *The Brunswick Building Society*, 8 Q. B. D. 403; referred to below, p. 334, note (*d*).

(*c*) See note, p. 271

vendors' solor, have a copy of the sd form on paymt of —— shillings for the same.

The same.

By a general deed of covenant (*a*).

VI. EACH pchaser shl, simultaneously with the exon of his convce, exte a genl deed of covt, to be prepared by the vendors' solors & retained by them (notice of wch shl be endorsed on the convce), contg covts on the pt of the pchaser, framed so as to bind his repves & assns, for securg the observce & pformce by him & them & the owners, lessees, & occupiers for the time being of his lot, of the afsd restrons & condons: But the vendors shl not be bound to procure the concurrce of all the pchasers in such genl deed, & the complon of the pchase of any lot shl not be delayed by reason of the non-sale or any delay in the complon of the sale of any lot.

As to mutual rights of purchasers in respect of restrictions imposed on them.

VII. NO pchaser shl be entled to any covt or engagemt from any other pchaser or the vendors or any other pson in respt of any of the restrons & liabilities mentd in the foregoing condons or parlars as affectg, or intd to be imposed upon, any other lot, whether such lot is sold or remains unsold: And the vendors reserve the rt to waive or modify the restrons or liabilities mentd as affectg or imposed on any lot in any mner wch may be agrd upon betn the vendors & the pchaser of such lot (*b*).

As to lots not sold.

VIII. IF any lot be not sold at the psnt sale the vendors shl for the ppose of the above condons stand in the place of the pchaser thof.

Provision for lot not being sold (*c*).

IX. IF any lot shl not be sold at the intd sale the vendors & all psons claimg under them shl in respt of such unsold lot have the same easemts & rts over or agst the sold lots, & the pchasers of sold lots shl have the same easemts & rights over or in respt of such unsold lot as if all the lots had been sold at such intd sale.

(*a*) See *Whatman* v. *Gibson*, 9 Sim. 196.

(*b*) See above, p. 287, note.

(*c*) This condition seems desirable on a sale in lots, having regard to *Wheeldon* v. *Burrows*, 12 Ch. D. 31; see Elph., N. & C., Interp. Deeds, 203.

x. The respive pchasers shl not be entled to any rt of light or air wch wd restrict or interfere with the free use of any adjoing or neighbourg lot for bldg or other pposes, & the convces shl exply exclude the grt of any such rt. Restriction of right to light, &c. (*d*).

xi. The scheme of roads, bldg lines, & other mres, as shown in the sd plan, & the bldg & other restrons imposed upon pchasers shl not be bindg on the vendors, & they shl be entled to vary or alter the same as regards any lot or lots the sale of wch may not be completed psuant to the psnt sale by auction, or as regards any lots wch may be put up & sold togr. Power to alter building scheme (*e*).

xii. If any question shl arise betn difft pchasers, or betn the vendors & any pchaser, as to the boundaries betn any lots, the same shl be settled by the auctioneer, whose decision shl be final. Boundaries.

XII.

Custody *of* Title Deeds *and* Covenants *to* Produce (*f*).

i. No objon or requon shl be made on the ground of any covt, acknmt, or undertakg, for the prodon or safe custody of munimts of title being defective or insufft, or on the ground of the absce of any such covt, acknmt, or undertakg. Insufficiency of covenant for production (*g*).

ii. As the munimts of title relate also to other ppty not included in the sale, they will be retained by the vendor, who will if required give to the pchaser a statutory acknmt of the rt to prodon & delivery of copies & undertakg for safe custody, *or, for tree or other fiduciary vendor,* "but witht Where all deeds retained.

(*d*) See *Wheeldon* v. *Burrows*, 12 Ch. D. 31; *Russell* v. *Watts*, 10 App. Cas. 590; *Beddington* v. *Atlee*, 35 Ch. D. 317.

(*e*) See above, p. 313, note.

(*f*) See the V. and P. Act, 1874, s. 2 (4, 5), and the Conv. Act, 1881, s. 9, and above, p. 255.

(*g*) As to this condition, see p. 254.

any undertakg for safe custody" thof, to be prepared by & at the expse of the pchaser (*a*).

Where some retained.

III. SUCH of the munimts of title in the posson of the vendor as relate exclusively to the ppty sold will be delivered to the pchaser. All other munimts in the posson of the vendor will be retained by him, & he will, &c., *as in form* II.

Sale in lots where deeds to be delivered to largest purchaser or to such purchaser as vendor thinks fit.

IV. MUNIMTS of title in the posson of the vendor relatg to any of the ppty now offered for sale, & also to other ppty of the vendor, will be retained by him. Munimts (other than docts of record) relatg exclusively to any of the ppty offered for sale will, if relatg to one lot only, be delivered to the pchaser of such lot, but if relatg to more than one lot, will be retained by the vendor until the whole of the ppty to wch they relate shl have been disposed of (whether at the psnt or any (*b*) future sale) whrupon the same will be delivered to the largest pchaser in value of the lots to wch the same relate, or in the event of equality of pchase moy to the pchaser of the first lot in order of sale of the lots in respt of wch the pchase moy is equal, *or*, "will be delivered to such of the pchasers as the vendor may think fit." And the vendor will, if required, give to any pchaser a statutory acknmt of the rt to prodon & delivery of copies & undertakg for safe custody, *or, for tree or other fiduciary vendor*, "but witht any undertakg for safe custody," of any munimts retained by him (whether permanently or temporarily) under this condon (*c*).

(*a*) The following is sometimes added on a sale by private contract:—"but to be perused on behalf of & exted by the vendor free of expse to the pchaser, & a memdum of the sale & of the sd acknmt and undertg shl be endorsed on one of the ppal deeds retained."

(*b*) If the vendor is under a similar contract with any purchaser at a former sale add here, "past, or."

(*c*) The old form of condition provided that the covenant for production should be given by the purchaser to whom the deeds were delivered, but there can be no objection to the statutory acknowledgment, &c., being given by the vendor before parting with them, as his liability ceases on his so doing.

The same. Where deeds to be delivered to purchaser of a specified lot.

v. The pchaser of lot 1 shl be entld to the custody of any deeds or munimts of title wch relate to that lot & also to any other lot or lots, & shl, if required, give to the pchaser of each of the other lots to wch the same relate, the usual statutory acknmt of the rt to prodon & delivery of copies, & undertakg for safe custody thof, to be prepared by & at the expse of the pchaser requirg the same. If lot 1 or any other lot is not sold, the vendor shl for the ppose of this condon stand in the place of the pchaser thof. Any delay in obtaing any such acknmt & undertakg as afsd shl not be a ground for delaying the complon of any pchase, but the acknmt & undertakg shl, in such case, be exted as soon after complon as the vendor shl be able to obtain the same.

On sale under Settled Land Act (*d*).

vi. Such of the munimts of title in the posson of the vendor or his trees as relate exclusively to the ppty sold [any lot] will be delivered to the pchaser. All other munimts will be retained by the vendor or his trees, & the pchaser shl be entld to the pper statutory acknmt of the rt to prodon of the munimts so retained, to be prepared by & at the expse of the pchaser, but the trees shl not be required to give any undertakg for safe custody of any munimts in their custody.

Right of tenant for life to custody of title deeds.

(*d*) A legal tenant for life is in general entitled to the custody of the title deeds (1 Dart, V. & P. 473; 3 Dav. Prec. 309; *Leathes* v. *Leathes*, 5 Ch. D. 221); but if the legal estate is in the trustees, they are the proper parties to hold them. This may sometimes cause difficulty, as the trustees could not be required to part with the deeds (unless all the property is sold) or to covenant for their production. This may have to be made the subject of a condition precluding the purchaser from requiring any covenant (see the next form), or requiring him to be satisfied with the covenant of the tenant for life, which must in that case be in the old form, as the statutory acknowledgment would not be effectual; see *infra*, p. 455, note. The powers now given by the Settled Land Acts to tenants for life point to an equitable tenant for life as the proper custodian of the deeds, and in *Re Burnaby*, 42 Ch. D. 621, an equitable tenant for life was held entitled to the deeds upon an undertaking not to part with them without the consent of the trustees, and to produce them to the trustees on all reasonable occasions; and in *Re Wythes*, W. N. 1893, 42, it was held that the Act had raised a presumption in favour of the right of an equitable tenant for life to be let into possession and to have the custody of the deeds. As to the possession and production of deeds, see 33 Sol. J. 655, 670, 695, 706, 714.

As to muniments not in vendor's custody.

VII. As regards any docts of title not in the posson of the vendor, whether the same are in the posson of his trees or other psons, the vendor shl not be required to give or procure from any pson or psons any covt for the prodon thof or any statutory acknmt or undertakg in reference thto, but the pchaser shl rely on his equitable rt to prodon.

Provision for indemnity of vendor in respect of liability under former covenants for production (*a*).

VIII. In any case in wch the vendor is under any obligon to any former pchaser for the prodon or safe custody of any munimts wch are handed over to the [any] pchaser at the psnt sale, the latter pchaser shl take upon himself such obligon in exoneron of the vendor thfrom, & shl, if required, enter into a pper covt of indemnity in that behalf, or give a pper substituted statutory acknmt & undertakg for prodon & safe custody to the pson or psons entled to the benefit of the origl covt, the deed or deeds for that ppose to be prepared by & at the expse of the vendor or covtee, but the expse of the perusal & exon thof by or on behalf of the pchaser to be borne by him.

XIII.

Sale *of* Chief Rents.

Commencement of title.

I. The title shl commence with a pchase deed in 18—, by wch the rent-chge was created, *or*, "with a convce on sale of the rent-chge in 18—, & no earlier or other title thto or evidce of the creation thof shl be required."

The same.

II. The title to the sevl lots shl consist of the duplicates of the respive deeds creatg the same, & the recent title thto resply commenc̃g with the assurces thof resply to A., deced, dated as to lot 1 in 18—, &c., *or*, "the sevl assurces & will specified in the —— column of the annexed table," & the subseqt devolon of title [& a declon to be made at the expse of any pchaser requirg the same that such respive rents have

(*a*) This of course only applies where the vendor has entered into an absolute covenant, his liability under which will continue after he parts with the deeds, according to the form heretofore in use in the case of beneficial owners, which was more onerous than the statutory covenant.

been regularly pd to the respive psons appearg to be entled thto for the last —— yrs], & no pchaser shl call for or make any requon or objon in respt of the intermediate title to any of such rents betn the date of the creation thof & the sd respive instrumts by wch the recent title commences.

III. The duplicate deed creatg the rent formg lot — is lost. The pchaser shl not require the prodon of that deed or the duplicate thof nor any abstract or copy thof, nor any other evidce of the contents or exon thof beyond the recital contd in subseqt deeds (one of wch bears date as far back as 18—), nor make any objon or requon on this acct. Loss of duplicate deed.

IV. No objon shl be taken as to the form in wch any rent was reserved. Form of reservation.

V. No further proof of the identity of the ppty on wch any rent included in the sale is chged shl be required than is afforded by the abstracted munimts & such other evidce (if any) as may be in the posson of the vendor. And no objon shl be taken in respt of any defect in such identificon. Identity.

VI. The rents of £—— (comprisg lot —) & £—— (comprisg lot —), wch have been divided for the convence of sale, were origlly created as one rent of £——, & the pchasers of these lots shl not make any objon or requon in respt of such divon or of the origl rent not being legally apportioned as agst the owners of the land. Division.

VII. The owner of the hereds out of wch the rent-chge formg lot — issues, is entled to indemnity out of such rent-chge agst an overridg rent-chge of £—— wch was origlly chged on such hereds togr with other ppty & agst certn covts & condons contd in the deed creatg such overridg rent. The pchaser shl take subjt to such rt of indemnity, & shl not require prodon of the deed by wch the overridg rent was created, or make any objon or requon in respt thof. Indemnity against overriding rent.

VIII. No objon shl be made on the ground that any of the rents hby offered for sale or the lands out of wch they issue are or may be eir alone or with other ppty subjt to any overridg chief or ground rent or rents, & the pchaser shl not require any indemnity agst any such overridg rent or rents other than such indemnity (if any) as is already existg, but The same.

shl be satisfied with a declon to be made if required at the expse of the pchaser, that no claim has ever been made agst the vendor or his predecessors in title in respt of any such rent.

The same. IX. THE paymt of the overridg rent of £—— mentd in the parlars was by a convce of, &c., chged upon a rent of £—— (issug out of —— square yards of land, situate, &c., & now payable by X.) in exoneron of & by way of indemnity to the owners of lot —, the pchaser whof shl not make any objon in respt of the sd rent of £—— or the sufficiency of such indemnity.

The same. X. THE lands out of wch the rents formg lots 1 & 2 issue, are subjt togr with the land formg lot 3 to an overridg chief rent of £——, & to certn powers of distress, entry, & rect of rents & profits in relon thto, but so far as regards the pchasers of those lots (or the vendors as to any lot remaing unsold), such overridg rent shl be chged exclusively on lot 3, the pchaser of wch (or the vendors if it is not sold) shl enter into & grt pper covts & powers of distress & entry & rect of rents & profits for indemnifyg the pchasers of lots 1 & 2 in respt thof, to be prepared by & at the expse of such respive pchasers.

Apportionment on completion. XI. Each pchaser shl on complon be entled to the rent pchased by him, or to an apportioned pt of any instalmt thot accrug due as from the day fixed for complon, & in case of such apportionmt being necy, shl pay to the vendor his proportion of such accrug instalmt.

As to unity of ownership (*a*). XII. No objon shl be taken by reason of a pt of the ppty on wch the rent was origlly chged havg been subseqtly acquired by or become vested in the then owner of the rent.

Misdescription. XIII. THE ppties on wch the rents included in the sale are resply chged, are believed & shl be taken to be correctly desed, & no error, mis-statemt, or misdescription in the parlars as to the ppty so chged, or as to the ownership of

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(*a*) It is a question whether such a partial unity of ownership would not extinguish the rent altogether; see Co. Litt., 147 b; *Dennett* v. *Pass*, 1 Bing. N. C. 388.

such ppty, shl annul the sale or be made a ground for any claim to compenson.

Amounts. XIV. No pchaser shl make any objon or requon on the ground that the rent comprd in his lot is not always as to amt correctly stated in the sevl docts of title relatg thto, & the sevl sums specified in the parlars, wch are the amts of rents reced by the vendors for upwards of —— yrs, shl be assumed to be correct notwg any such discrepancies.

XIV.

Sale *on* Chief Rents *for* Building (*b*).

Biddings. I. The pson offerg the best reserved yrly fee-farm rent for each lot (wch shl commence from the —— day of ——) shl be the pchaser.

II. *Other usual condons as to biddgs, see* p. 257.

Deposit. III. Every pchaser shl immedly after the sale pay into the hands of the auctioneer a deposit equal to 1 yr's rent of his lot, wch sum will accdly on the complon of the pchase be allowed to the pchaser as a dischge from the first yr's rent; every pchaser shl also immedly after the sale sign an agrmt in the form subjoined.

Redemption (*c*). [IV. The fee-farm rent or rents payable by any pchaser may, if he so desire, be made redeemable on or bfe the —— day of ——, on paymt to the vendors, or the owner or owners thof, of a sum equal to 25 yrs' pchase thof, the expses of or incidental to such redmon to be borne by the pchaser.]

Tithes, reservation of rent-charge to vendors in lieu of. [V. Each lot will be chged with an annl rent in lieu of tithe rent-chge to be reserved to the vendors & made payable

(*b*) Compare the form of contract for sale on chief rent at p. 354, *infra*.

(*c*) The provision in the Conv. Act, 1881, s. 45, for redemption of rent-charges, does not apply to rents reserved on sales.

half-yrly, wch rent is to be fixed by the auctioneer, but is not to exceed by more than one-tenth the amt of the tithe commuton award. No pchaser shl require any apportionmt of the tithe, or any further indemnity in respt thof than the covt in his convce by the vendors to pay the same (*a*).]

VI. *Condons requirg each pchaser to erect & maintain one or more houses of minimum value, & imposg other restrons,* *see* pp. 315—317.

Conveyance (*b*).

VII. THE rents reserved shl be made payable half-yrly on the —— day of ——, & —— day of ——, free from all dedons (*c*) whatsr except ppty tax, & each convce shl contain covts by the pchaser to pay the rents reserved on his lot or lots, & to keep the bldgs to be erected on his lot or lots pperly repaired [& insured] [& powers for the owner for the time being of the reserved rent or rents to enter & view the condon of the premes, & to enter on non-paymt of such rent or rents or on breach of any of the pchaser's covts or condons contd in such convce, & specifically to pform such covts or condons on each occasion of entry, & to remain in posson & take the rents & profits of the land entd upon, until the rent or rents in arrear, & the costs & expses incurred in the exon of such power shl be satisfied, *or, in lieu of such last power of entry,* " & an absolute power of re-entry on non-paymt of such rent or rents or on breach of any of the pchaser's covts & condons contd in such convce"] (*d*).

(*a*) See *Re Ebsworth*, 42 Ch. D. 23.

(*b*) See also the form, *infra*, pp. 354—356.

(*c*) As to the effect of these words in exonerating the owner of the rent-charge from liability to land tax, see 3 Dav. Prec. 313, note.

As to covenant to maintain buildings, &c.

(*d*) The efficacy of the provisions hitherto usually inserted in grants in fee on chief rent for securing the rent is very questionable, both as regards the covenants of the grantee for the maintenance of buildings, and the power of re-entry on breach of the covenants. The doctrine that the benefit of a covenant cannot run at law with a rent (*Milnes* v. *Branch*, 5 M. & S. 411; *Randal* v. *Rigby*, 4 M. & W. 130; *Haywood* v. *Brunswick Building Society*, 8 Q. B. D. 403; 1 Smith's L. C., 105), appears very unsatisfactory and difficult to uphold on principle, whether the rent is created by grant, so that the grantor is also the covenantor, or (as is much more usual) by reservation, so that the covenant is by the grantee

VIII. THE pchase shl be completed on the —— day of —— next, at the office of the vendor's solors, Messrs. ——,

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(see Sug.V. & P., 591); and even if well founded, it could hardly prevail in equity, as a conveyance of the rent with the benefit of the covenants, whether expressed (as it should be) or implied, would enable the assignee, if necessary (which since the Judicature Act it probably would not be), to sue in the name of the covenantee or his representatives (see the parallel case of *Riddell* v. *Riddell*, 7 Sim. 529). An affirmative covenant, however, of the above nature (to spend money on the land) is precarious, having regard to the doctrine, now settled, that it is not enforceable against the assigns of the covenantor, although with notice (*Austerberry* v. *Oldham Corporation*, 29 Ch. D. 750; see above, p. 311, note).

As to powers of re-entry and distress on breach.

It has also been held, that a power of re-entry on breach of a covenant if unlimited as to duration, is void as a perpetuity; *Dunn* v. *Flood* (25 Ch. D. 629; and see *per* Baggallay, L.J., *ibid.*, on appeal, 28 Ch. D. 592), where the covenant was a restrictive one (as to user of the land), and the power authorised the possession to be retained during the continuance of the breach, and for three months afterwards. That case can hardly be regarded as having finally settled the point, which did not in fact call for decision (see Challis on Real Property, p. 177); and it leaves open the question whether, if the power were strictly confined to abating or making good the breach (which, however, it now would be although in terms absolute, by the effect of the Conv. Act, 1881, s. 14, empowering the Court to relieve against forfeiture, see sub-s. 3), it would still be bad. It seems open to contention that a power so restricted, if annexed to a negative covenant (as in *Dunn* v. *Flood*), is not objectionable on the score of perpetuity, as the covenant itself is free from that objection (see p. 311, note), and the power is a mere adjunct for enforcing it. But in the case of an affirmative covenant, there would be more difficulty in maintaining this view; and a power of entry, whether absolute or qualified, cannot, in the present state of the authorities, be safely relied on (whether the covenant be affirmative or negative), unless restricted to lives in being and 21 years. It is conceived that it is enough if the power of entry is confined to lives in being, &c., and that the power to retain possession until the breach is satisfied need not be so confined, whether the entry would give the grantee an estate in the land or not; as to which see Elph., N. & C., Interp., Deeds, p. 246. A power of distress on breach of such a covenant, would also apparently be open to the same doubt as to its being a perpetuity, and would possibly in addition be avoided by the Bills of Sale Acts of 1878 and 1882. So far as regards enforcing payment of the rent, the powers of entry and distress would seem to be unimpeachable, being no more than the ordinary incidents of a rent-charge under the Conv. Act, 1881, s. 44 (which, however, by sub-s. 1 are not implied, unless they might have been expressly conferred), and see the Settled Land Act, 1890, 53 & 54 Vict. c. 69, s. 9; and (as regards the power of distress) being incident to a rent-charge at common law (Co. Litt. 114 a); but for enforcing the cove-

at ——, at wch time & place each pchaser shl be entled to a pper convce of his lot or lots, to be prepared by & at the expse of the pchaser (*a*), & the vendor shl be entled to

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nants as to the maintenance of buildings, some other expedient must be had recourse to.

As to creation of rent-charge for enforcing covenants.

A mode which may be suggested is to create a further perpetual rent-charge issuing out of the land of the covenantor, by way of security for the performance or penalty for the breach of the covenants (see *per* Lindley, L.J., 29 Ch. D. 783) in a manner similar to that sometimes adopted for indemnifying a purchaser against a rent (see *infra*, INDEMNITY); such rent-charge remaining dormant until wanted, but if required to be enforced, carrying with it the usual remedies. Such a rent-charge, if limited so as to arise only on a breach of the covenants, might itself be open to the same objection as a mere power of entry, as creating a perpetuity (the decisions to the contrary in *Gilbertson* v. *Richards*, 4 H. & N. 277; and *Morgan* v. *Davey*, 1 Cab. & E. 114, being in effect overruled by *L. & S. W. Ry. Co.* v. *Gomm*, 20 Ch. D. 562); but if made to take effect immediately, with a provision that the performance of the covenants shall be deemed a satisfaction of the rent, or that so long as the covenants are duly performed, the rent shall be held in trust to attend the inheritance of the lands charged, the objection would, it is conceived, be avoided (see Lewis on Perpetuities, 612—631, and Suppl. 201, referring to *Ex parte Ralph*, 1 D. G. 219).

Other expedients for enforcing covenants.

The plan of reserving to the rent-charge owner the right of specifically performing the covenants, and recovering the cost, by limitation of the use under the Conv. Act, 1881, s. 62 (in the manner referred to above, p. 312), might be tried, in combination with the other mode above suggested, or otherwise; but the employment of that enactment for creating a right of a nature not before known to the law, must be regarded as a doubtful experiment. The other plan adverted to at p. 312, note, of creating a long term with the covenants annexed, to be afterwards enlarged into a fee under the Conv. Act, 1881, s. 65, might also be adopted, and seemingly with success. As regards the covenant to erect the buildings, the limit of time does not usually exceed two years, so that there would probably be no practical difficulty in enforcing it: see *Andrew* v. *Aitken*, 22 Ch. D. 218; but sometimes the conveyance is not executed until the buildings are completed. As to the right to have the arrears of a rent-charge raised by sale, see *Re Tucker*, W. N. 1893, 41.

It is not known how far the practice, as to the provisions for securing chief rents, has changed in consequence of the recent decisions above referred to; the above suggestions deserve consideration, but any machinery which tends further to complicate dealings arising out of the chief rent system, which are already sufficiently troublesome, does not much commend itself.

(*a*) The ordinary practice, that the conveyance should be prepared by the purchaser, ought not, it is considered, to be departed from in this case, as is the practice in some places.

a duplicate thof, if required, to be prepared by him at the pchaser's expse. *Add, if desired, condon as to genl form of convce*, p. 325, No. V.

XV.

Sales upon or subject to Chief Rents. Miscellaneous Conditions.

Sale in lots, apportionment, and indemnity (*b*).

1. As to any ppty or lot wch is sold subjt to pt only of an entire chief or ground rent chged on the same, togr with other ppty of the vendors or any other lot or lots as mentd in the parlars, the pchaser or respive pchasers of the lot or lots subjt thto & as regards any unsold pt of the ppty so subjt the vendors shl by a separate deed enter into mutual covts for paymt of the respive portions of such rent wch are to be borne & pd by them resply as specified in the parlars, & for the indemnity of the other or others of them & his or their respive portions of the ppty in respt thof, such indemnity if required to be supplemented & further secd by an express chge upon & by the grt of powers of distress & entry upon & rect of the rents & profits of the ppty or lot by or out of wch the respive apportioned pts of such rent are to be borne & pd, or (at the option of the pson entled to the indemnity) by the creation of a new rent eql in amt to such respive apportioned rent to be chged upon & issuing out of such ppty or lot & to be limd or grted to the pson entled to the indemnity. The deed or deeds of indemnity shl be prepared & engrossed by the solors of the

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(*b*) Where there are more than two parties to the arrangement it is better to have a separate deed of indemnity as is here provided. The validity of powers of entry and distress for securing such an indemnity seems open to the same doubts as the like powers for securing building covenants in conveyances on chief rents; see p. 335, note, as to this, and as to the creation of a new rent.

vendors in as many pts as there are pties thto at the jt expse of such pties, & such pties (other than the vendors) shl also pay the chges of their own respive solors in relon thto, but any delay in the preparon or exon of such deed shl not be a ground for delaying the complon of the pchase of any lot.

The same. Fuller form with variations.

11. Lots 1 & 2 are subjt under one convce to an entire chief rent of £15, & lots 3, 4, & 5 are subjt under one convce to an entire chief rent of £20, & each of such lots is sold subjt to such apportioned pt of the chief rent affectg the same as is to be borne by such lot as stated in the parlars & to the covts & provons contd in the deed creatg the chief rent so far as they affect such lot. No legal apportionmt however of such respive chief rents has been or will be made; but the pchaser of each of such lots if sold separately from the other lot or lots held under the same convce shl, if required, enter into covts with the pchaser or each pchaser of the other lot or lots held under the same convce for the paymt & indemnificon of such other pchaser agst the proportion of the chief rent affectg his lot, wch is to be borne by him, & for the observce & pformce of & the indemnificon of such other pchaser agst the covts & provons contd in the deed creatg the chief rent so far as they affect his lot, & shl also, if required, *add provon for further indemnity by an express chge & by grt of powers of distress & entry or creation of new rent, as in last form.* Every such deed of indemnity wch may be required by any pchaser shl be prepared by & at the expse of the pchaser requirg the same, & exted by the pchaser or pchasers givg the same at his or their own expse, *or*, "every such deed of indemnity shl be prepared by the vendors' solors in such form as they may think fit, & be exted in duplicate or triplicate (as the case may require) by each pchaser of a lot held under the same convce, & the expse of preparg & extg such deed shl be borne by the respive pchasers extg the same in equal proportions." If any lot held under the same convce shl remain unsold the vendors shl, for the pposes of this condon,

stand in the place of the pchaser of the unsold lot, but the covts of the vendors shl be framed so as to restrict their psonal liability to the period of their ownership of such unsold lot, *or*, "but the vendors shl not be required to enter into any covts."

III. Lots —— are subjt to a chief rent of £——, created by a deed, &c., & to certn covts & condons contd in that deed. Such rent shl be borne as to £—— by lot ——, & as to £—— by lot ——, *or*, "shl be apportioned betn the sd lots as stated in the parlars," & the apportionmt shl be carried out by mutual covts for paymt & indemnity, with (if required) an express chge & powers of distress & entry or the creation of a new rent for enforcg & securg such paymt & indemnificon, & any question as to the mode of effectg the same shl be settled by the vendors' counsel, & no legal or other apportionmt shl be required to be made. Each lot will also be sold subjt to the sd covts & condons so far as the same relate thto. The same. Short form.

IV. Lots 1, 2, & 3 are, with other ppty of the vendors, subjt to a yrly rent of £——, the whole of wch is to be borne by lot 1, & that lot will be conveyed subjt to the paymt of such rent in exoneron of the other lots & ppty liable thto, & the pchaser of lot 1 shl, at his own expse, enter into a covt with the pchasers of the other lots & also with the vendors as to such other ppty & as to any lot remaing unsold for paymt & indemnificon agst such rent, *or*, "shl indemnify lots 2 & 3 & the owners thof & the vendors agst the sd rent & all incidental expses by extg & deliverg to the pchasers of those lots & to the vendors on the complon of the pchase a pper deed of covt in that behalf [contg, if required, an express chge upon & powers of distress & entry over lot 1, or a limon of a new rent of eql value with the sd origl rent to be chgd upon that lot in favour of each of such pchasers & the vendors for securg paymt of the sd origl rent & all expses occasd by non-paymt thof] (*a*), such deed of indemnity Sale in lots. Entire rent to be borne by one lot.

(*a*) Sometimes a lot entitled to be indemnified against an overriding rent

to be prepared by & at the expse of the pchaser of lot 1, & in case of diffce to be in such form as the vendors' counsel shl approve, & the pchaser of lots 2 & 3 shl be satisfied with such indemnity," *or*, "but the pchasers of the other lots shl not require any indemnity in respt of such rent."

Indemnity on sale in lots against rent not actually paid.

v. THE pchasers shl be precluded from requirg any informon beyond what is afforded by the abstracted docts resptg a rent-chge of £—— p.a., which is stated to have been chgd on the ppty in the yr —— for a charitable ppose, but wch is supposed not to have been pd or claimed for many yrs. The liability (if any) to this rent-chge shl be assumed by the pchaser of lot —— in exoneron of the other lots, & such pchaser shl, if required, join in the convces of the other lots (at the expse of the respive pchasers requirg the same) in order to covt for their indemnity agst the sd rent-chge, & the pchasers of the other lots shl be satisfied with such covt, & shl not require any other indemnity agst the same, & inasmuch as the vendors have entered into covts with the pchasers at a former sale of ppty held under the same title for their indemnity agst the sd rent-chge, the pchaser of lot —— shl also indemnify the vendors agst such covts, such respive indemnities to be prepared by & at the expse of the respive psons entled to the benefit thof. In the event of any lot or lots not being sold at the psnt sale the vendors shl stand in the place of the pchaser or pchasers thof for the ppose of this condon.

Rent not paid by vendors. Indemnity.

vi. LOTS —— are or were formerly subjt with other ppty to a yrly rent of £——, but wch is not pd by the vendors. The respive pchasers shl be satisfied with this statemt, &

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is charged with a rent payable to the owner of the lot charged with the indemnity; in that case add:—

Power to retain rent, as indemnity.

"And also a power to the, *pson entled to be indemnified*, his hrs & assns, to retain out of the sd rent-chge of £——, any moys wch he or they may be called upon to pay, & shl pay in respt of the sd overridg rentchge of £——, & any expses incurred by him or them in conseqce of the non-paymt of such last-mentd rent-chge."

shl not require any indemnity in respt of such rent or any further informon in relon thto.

VII. EACH pchaser of lots —— & —— shl enter into a covt in his convce for the indemnity of the vendors [& the este of their testor] as from the complon of his pchase agst the perpetual yrly rents to wch the ppty comprd in such respive lots is subjt as mentd in the parlars, & agst the covts & condons as to bldg on & user of such ppty resply & orwise contd in the deed by wch such rents resply were created [*or*, agst the rents, covts, & condons mentd in No. —— of these condons], & shl, if required, exte & deliver to the vendors a duplicate of the convce, to be prepared by & at the expse of the vendors. Indemnity of vendors against liability under covenants.

VIII. THERE is a chief rent of £—— p.a. chged on the premes. The owner of this rent will join in the convce to the pchaser for the ppose of releasg the same; but no title shl be required to be shown thto other than the convce of the same to the psnt owner. Rent to be released. Title.

IX. LOT —— is subjt to an apportioned rent of £——, pt of a chief rent of £—— created by a deed, dated, &c.; but no legal apportionmt has been or shl be required to be made nor shl any objon or requon be made on this acct. Former apportionment.

X. BY the will of a former owner contributory rents of £—— & £—— were directed to be pd by the owners of other ppties as apportioned pts of a chief rent of —— chged upon lot —— & such other ppties. The pchaser of lot —— shl be satisfied with the apportionmt or divon so made of the rent of £——, & shl not require any other apportionmt thof or any indemnity in respt of the portions payable out of such other ppties. Former apportionment by will.

XI. THE sevl lots are subjt to various provons as to the apportionmt of or indemnity agst rents affectg the same or some pt or pts thof togr with other ppty; but none of such mres shl be made the ground of any objon or requon, & the respive pchaser shl take subjt thto in all respts, & it shl be assumed that all such provons as far as necy have been duly Former apportionments and indemnities. General provision.

observed & pformed up to the complon of the pchase of the respive lots.

Overriding rents. General exclusion of objections.

XII. No objon or requon shl be made on the ground that any lot or any pt thof is eir alone or with other ppty subjt to any overridg chief or ground rent or rents, or any covts or condons other than those subjt to wch the same is sold nor on the ground of the absence or insufficiency of any indemnity agst any such overridg rent, covts, or condons, & the pchaser shl not call for any informon resptg the origin or creation thof or orwise in relon thto beyond what may appear in the abstract, but shl be satisfied with a declon to be made, if required, at his expse that no claim has ever been made agst the vendors in respt of any such rent, covts, or condons.

Bar of requisitions. Various. Stringent.

XIII. No pchaser shl require the deed creatg any rent mentd in the parlars or these condons to be abstracted or produced, or any informon (except such as may be in the vendors' posson) as to the contents thof or the psons by whom the rent is pd or the ppty chgd thwith or the covts or condons contd in the deed creatg the same or orwise in relon thto or any indemnity agst such rent, covts, or condons.

As to lot not sold.

XIV. If any lot is not sold the vendors shl stand in the place of the pchaser thof for the ppose of these condons.

Receipt for last payment (*a*).

XV. The rect for the last paymt of the chief or ground rent chged on any lot wch shl have accrued due previously to the complon of the pchase, by whomsr signed, shl be conclusive evidce of the pformce & observce of all covts & condons to wch such lot is subjt, or of the effectual waiver of any breach of any such covt or condon up to the complon of the pchase, & no evidce shl be required of the title or authority of the pson or psons by whom such rect is given.

Option to commute part of purchase-money into chief rent.

XVI. The pchaser of any lot shl, on giving notice in writg of his desire so to do within —— weeks of the day of sale, have the option of commutg —— p.c. of his pchase-moy

(*a*) The provision as to this in the Conv. Act, 1881, s. 3 (4), only applies to leases, see p. 254.

into a perpetual rent of £5 p.c. p.a.: such rent to commence from the —— day of ——, & to be payable half-yrly, in wch case he shl within —— months from that day accdg to position, plans, elevons, & materials to be approved by the vendors, erect & complete on such lot houses or bldgs of sufft value to pduce an annl rental of not less than 3 times such rent, & he shl not be entled to a convce of such lot unless & until such houses or bldgs shl have been so erected & completed to the satisfon of the vendors' surveyor. The convce of every lot pchased subjt to a rent & a duplicate thof shl be prepared by the vendors' solors at the expse of the pchaser, & shl contain such covts & provons as are usually inserted in deeds creatg such rents, & parlarly covts & provons framed so as to bind the pchaser & his sequels in title, as far as may be, to maintain, repair, & rebuild whenever necy the houses or bldgs to be erected psuant to the last condon, & agst the carryg on of any noisome or offensive trade or business on the premes. The pchaser of any such lot may have the same conveyed to him by sevl convces at his expse, such a proportion of the rent being reserved in each as the vendors shl think fit.

XVI.

Business *as* Going Concern (*b*).

1. *Usual condons except as follows:* The business & works will be continued & carried on by the vendors for their own benefit & at their own risk & cost up to the day fixed for complon of the pchase, & in the event of the actual complon being delayed beyond that day will be continued by them from that day up to the actual complon thof for the benefit

Manufacturing business.

(*b*) Compare the form on a sale by private contract, *infra*, p. 378.

& at the sole risk & cost in all respts (includg the manager's salary) of the pchaser, who shl also take to & pay for all the fixed & movable machy, engines, tackle, waggons, carts, horses, & other live & dead stock, & plant, chattels, & effects wch shl be in or upon the prcmes or in use in connon thwith on the day fixed for complon, togr with the book debts owing to the sd business at that date at their fair value, to be ascertained by the valuon, &c., *see* p. 274. The pchaser shl pay intt on his pchase-moy & the amt of the afsd valuon or the balce for the time being remaing unpd at the rate of £5 p.c. p.a. as from the day fixed for complon until the same shl be pd. Upon paymt of the pchase-moy, togr with the amt of the sd valuon & the intt due under this condon, the pchaser shl be entled to posson or to the rect of the profits of the sd business & works, & pay, bear, & dischge & indemnify the vendors agst all rates, taxes, & other outgoings and losses (includg all liabilities & outgoings arisg out of any uncompleted contracts or engagemts) as from the day fixed for complon, & the profits and outgoings shll (if necy) be apportioned. Until the actual complon of the pchase the business shl, except as to the approprion of profits & liability for outgoings & losses, be carried on under the same style & firm & in the same mner & the vendors shl retain the same posson & ppty in the premes & have the same rt of controllg the conduct & managemt thof as they wd have had if the same had not been sold.

Newspaper. II. (1) *Usual condons as to biddgs, deposit, complon & intt.* (2) The vendors will deliver to the pchaser a plain copy of the declon of proprietorship filed at the Stamp Office under wch the newspaper is now published, but no abstract or further evidce of title shl be required, & the afsd declon shl be conclusive evidce of the vendors' title. (3) The newspaper will be continued to be published as htofore by or on behalf of the psnt proprietors at their risk & for their benefit until & inclusive of the publicon of the number or edition for the —— day of ——, from wch time the pchaser shl be entled to print & publish or continue the same.

(4) On paymt of the balce of pchase-moy at the time & place above appted the vendors will, if required, exte to the pchaser a pper assignmt to be prepared by & at the expse of the pchaser. (5) Immedly after complon of the pchase the pchaser shl make or cause to be made & shl duly file a fresh declon as required by law as to the intd place of printg & publicon of the sd newspaper, & as to the printer & publisher & proprietor or proprietors thof, & shl duly comply with all the requiremts of the law with respt to the printg & publicon of the sd newspaper in continuon of the publicon thof by the vendors, & the pchaser shl not be entled to publish the sd newspaper until such fresh declon has been duly made & filed & the other requiremts afsd have been duly complied with. (6) If the pchaser shl fail to comply with these condons his deposit shl thrupon be actually forfeited to the vendors, who shl have the option eir to discontinue the sd newspaper or to continue the same eir immedly or at any time aftwds & eir temporarily or permanently, & in case they shl so continue the same they shl be at liberty to resell the same at such time & place subjt to such condons & in such mner as they shl think fit, & any deficiency in price on the re-sale & all expses attendg the same, togr with all losses (if any) incurred in carrying on the newspaper in the meantime shl be immedly made good by the defaulter at the psnt sale, or shl be recoverable as & for liquidated damages, but, on the other hand, the vendors shl be entled to retain for their own benefit all profits resultg from carryg on the sd newspaper until the re-sale.

XVII.

Underwoods.

1. No pson to advce less than 5*s*. per acre at each biddg nor retract a biddg. The highest bidder to be the pchaser, Biddings.

& shd any dispute arise as to the biddgs, the lot shl be put up again at the last previous biddg. There will be a reserve on each lot.

Deposit and security.

II. EACH pchaser immedly to pay down a deposit of 10 p.c. on his pchase-moy, & to sign an agreemt in the form subjoined, & within 3 days from the day of sale to give a bond, with such one or more sureties as shl be required & be approved of by the agent of the vendors, for the due paymt of the balce of his pchase-moy at 10 months from the day of sale.

Boundary fences.

III. THE lots will be sold by the acre, & where any lot abuts on a boundary fence the vendors' workmen will at once pceed to make such fence, using any materials required from such lot.

Purchaser to give security.

IV. No pchaser will be allowed to commce cuttg any wood until the vendors' agent is fully satisfied with the proposed secy, & at any time aftwds the vendors may call for further approved secy, & give notice thof to any pchaser by a notice left at his last known place of abode, & he shl give the required secy within 6 days from the date of such notice, durg wch time no pt of the lot shl be cut, sold, or removed; & if after the lapse of such 6 days the pchaser refuses or neglects to give the required secy, his lot or lots shl revert to the vendors, with all the labour bestowed thron, & the vendors shl be at full liberty to cut the remr & sell & dispose of the same, & also any wood cut but not removed by the pchaser, eir by private sale or public auction, & if any deficiency shl be found the pchaser shl still be liable to make it good.

Cutting.

V. THE wood to be cut in a pper, customary, & workmanlike mner.

Certain wood not to be cut.

VI. THE pchaser to leave standg all young standard oaks or other tellers, & to leave uncut all the firs now standg in any of the woods, doing as little damage as possible in cuttg & clearg the woods.

Cattle to be muzzled.

VII. ALL horses, oxen, or other cattle brought into the woods to be muzzled. If any horse or other beast be found

in the woods after the 1st of April witht a muzzle, the pchaser on whose lot it shl be found shl pay 10*s*. for each head to the vendors as liquidated damages.

VIII. THE pchaser not to cut, lop, or orwise damage the timber, trees, tellers, or saplgs, & to make satisfon to the vendors for all loss or damage they may sustain by the carelessness or negligce of his workmen or servants employed in the wood, & no pson to have any authority to permit or order any description of tree or wood to be cut but what is clearly included in the sale & strictly underwood. Not to lop timber.

IX. THE wood to be all cut from the stubbs bfe the 1st of April, & to be cleared from the woods on or bfe the 1st of May next, or it will be forfeited to the vendors. Work to be finished by certain date.

X. No dogs to be allowed to go into the woods except by leave of the vendors. Dogs.

XI. IF any pchaser shl neglect or refuse to comply with any of the above condons the deposit-moy & the wood uncleared shl be forfeited, the lot or lots resold by public or private sale, & the deficiency (if any) on such second sale, togr with all expses attendg the same, shall be made good by the defaulter at the psnt sale & be recoverable as liquidated damages. Neglect to comply with conditions.

IT IS HBY AGRD betn Messrs. ——, *the Auctioneers*, as agents for A. & B. (*a*), the vendors, & —— of ——, that at the sale this day of the underwood belongg to the vendors the sd —— pchased the follg lot at the price below mentd, subjt to the above-printed condons, & that he has pd the sum of £—— as a deposit & in pt paymt of the pchase-moy to the sd Messrs. —— Memorandum of contract.

Lot —— at —— pounds —— shillgs —— pence per acre.

AS WITS our hands this —— day of ——.

(*a*) See p. 268, note, *Scorell* v. *Boxall*, 1 Y. & J. 396.

CONTRACTS FOR SALE (a).

I.

AGREEMENT *for* SALE *of Freeholds or Copyholds* (*b*), *with usual* PROVISIONS. VARIATIONS *where the* VENDOR *contracts by an* AGENT, *and for a* SALE *under the* SETTLED LAND ACTS, *&c.*

Parties

ARTICLES OF AGRMT made the —— day of —— BETN A., of, &c. [as agent for & on behalf of C., of, &c.] (hinafter

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Frame of contracts for sale.

(*a*) See the forms of general and special conditions under the head CONDITIONS OF SALE, which are applicable for the most part, with little (if any) alteration, to sales by private contract. And see the forms given below of miscellaneous clauses applicable to sales by private contract. Special clauses relating to various descriptions of property, such as advowsons, reversions, life policies, chief rents, &c. will be found under CONDITIONS OF SALE. The conditions usual on sales by auction are very commonly, notwithstanding the stringency of some of them, submitted to by purchasers on sales by private contract. See also the note, *ante*, p. 252, as to the provisions of the Vendor and Purchaser Act, 1874, and of the Conv. Acts, 1881 and 1882, and the other notes to CONDITIONS OF SALE.

Variations for sale under Settled Land Act.

For variations for a sale by a tenant for life or other limited owner under the Settled Land Acts, or by trustees or mortgagees, see CONDITIONS OF SALE, pp. 264, 265.

As to mansion-house, &c.

If the sale is of the mansion-house or land occupied with it, and the consent of the trustees or Court has not been obtained under s. 10 of the Settled Land Act, 1890, 53 & 54 Vict. c. 69 (which has repealed s. 15 of the Settled Land Act, 1882), clause 1 may be modified, and a clause

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(*b*) As to the enfranchisement of copyholds, see the Copyhold Act, 1887, s. 1.

called the vendor) of the one pt, & B., of, &c. (hinafter called the pchaser) of the other pt.

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avoiding the contract if such consent is not obtained added as follows :—

" The vendor, who is sellg as tenant for life [limd owner], under the powers of the Settled Land Acts, 1882 to 1890, agrees to sell, subjt to the consent of his trees or the approval of the Ct being obtained as hinafter mentd, & the pchaser agrees to pchase, &c."

" The vendor shl on or bfe the —— day of ——, at his own cost or that of the settled este, apply for & endeavour to obtain the consent of the vendor's trees to or an order of the Ct approvg the sale, & in case such consent or order shl not be obtd on or bfe the —— day of ——, or such later day as the vendor & the pchaser shl agree to [or in case the sale cannot for any reason arisg from the state of the title be carried into effect under the statutory or other powers of the vendor or his trees] then the sale shl be void, & the deposit shl be repd to the pchaser, but witht any intt, costs, or compenson."

Clause avoiding contract unless consent of trustees or Court obtained.

As to who are trustees for the purposes of the Settled Land Acts, see the Act of 1882, s. 38, and the Act of 1890, s. 16. As to the necessity for giving notice of the sale to the trustees, unless waived by them, see the Act of 1882, s. 45, as modified by the Amendment Act of 1884, s. 5. The waiver should precede the contract, and not be made in the contract itself, such a course being of doubtful validity, and being a matter which does not concern a purchaser dealing in good faith. For a form of waiver by the trustees see Vol. II. MISCELLANEOUS. See generally as to sales under the Settled Land Acts, CONVEYANCES ON SALE, *post*.

Under the Settled Land Act, 1882, s. 22 (2), the investment of capital money is under the control of the tenant for life, who is therefore the proper person to enter into a contract of purchase. This precedent is adapted without alteration to the case where the purchase is made by a tenant for life or other limited owner under the Act; or (except the substitution of the plural) to a purchase by trustees.

As to purchase by tenant for life or trustees.

For a form of agreement for sale by private contract referring to printed particulars and conditions of sale, see p. 268.

The stamp on a contract for sale is 6*d*. if under hand only or 10*s*. if by deed, under the headings "agreement" and "deed" in the schedule to the Stamp Act, 1891 (54 & 55 Vict. c. 39), but subject to the provisions of

As to stamp on contracts for sale.

Agreement for sale.

1. THE vendor agrees to sell, & the pchaser agrees to pchase, for the sum of £—— the inhance in fee simple [the inhance accdg to the custom of the manor of —— in the coy of ——] in posson free from [land tax & tithe rentchge, & from all] incumbces [except as hinafter mentd], of ALL, &c., *pcels set forth fully, with a refce, if need be, to a schdle & plan, see* CONVCES ON SALE, PCELS, with the appurts thof (*a*).

[*Provon as to timber, fixtures, &c., if any, to be taken at a valuon*, p. 273.]

Payment of purchase-money and completion.

2. THE pchaser havg pd to the vendor the sum of £—— pt of the sd pchase-moy as a deposit (*b*) on the exon of this

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s. 59 of that Act (re-enacting s. 15 of the Revenue Act, 1889, which last-mentioned enactment repealed and was substituted for s. 18 of the Customs, &c. Act of the same session). The object of s. 59 of the Act of 1891 is to impose the *ad valorem* sale duty on the *contract* in cases in which (as in *Commissioners of Inland Revenue* v. *Angus*, 23 Q. B. D. 579) the contract may not require an actual conveyance to perfect it. It accordingly (sub-s. 1) makes the contract liable to the duty where the subject-matter consists (a) of a merely *equitable* estate or interest whether in land or any other property, or (b) of any estate or interest in any property, with the exception of land, or of property situate out of the United Kingdom, or of goods, &c., and certain other exceptions. But the contract if stamped only with the fixed duty of 6*d.* or 10*s.*, as the case may be, is to be deemed duly stamped for the purpose of enforcing specific performance or recovering damages for its breach (sub-s. 4); and, in the like case, it is to be regarded as duly stamped if a conveyance is presented for stamping with the *ad valorem* duty within six months, or such longer period as the commissioners may think reasonable (sub-s. 5). If the *ad valorem* duty is paid on the contract, provision is made for denoting it on or transferring it to the conveyance (sub-s. 3). In case there is a sub-sale before the conveyance the sub-contract is to be charged with the *ad valorem* duty on the excess consideration (if any), or otherwise with the fixed duty (sub-s. 2). In the event of the contract being rescinded or not carried into effect the *ad valorem* duty is to be returned (sub-s. 6). It will be observed that s. 59 does not apply to a legal estate in land; and it is believed that it is the practice in general (at any rate on sales by auction) to put only a 6*d.* stamp on the contract even in cases coming within that enactment.

(*a*) As to what passes as appurtenances to the land, see *infra*, p. 430, note. Where the property is insurable, add, "& with the benefit of any existg or future insces agst fire, &c.;" as at p. 295, form XVII.

As to pay-

(*b*) Sometimes to guard against the risk of the vendor, if he receives

agrmt shl pay the residue of the sd pchase-moy [togr with the amt of the afsd valuon] to the vendor, or as he shl direct, on the —— day of —— next at the office of the vendor's solors, Messrs. —— at ——, at wch time & place the pchase shl be completed.

3. *Posson & intt*, p. 259.

4. *Outgoings, easemts, &c.*, p. 260, *saying as to the leases & agreemts with the tenants*, "the counter-pts or copies of wch have been pduced to the pchaser's solor, & of the contents & parlars of wch he shl be deemed to have notice."

5. The vendor shl, if required, within, *one week*, from date hrof, deliver or send by post to the pchaser or his solor an abstract of his title to the premes commencg, &c., *here add any special condons as to commencemt & evidce of title, see above*, Condons of Sale, p. 276, *et seq., includg, if required, provons makg recitals evidce, identity, &c., as at* p. 262, *& as to convce, munimts, &c., time for delivery requons, &c., compenson for misdescription, & non-compliance with condons, see* pp. 263—268: *reservons & restrictive condons in favour of vendor, see* pp. 310, 311, *& substitutg for the refces to the parlars & condons of sale a refce to*, "this agreemt," *& for the refces to the day of sale a refce to the*, "date of this agrmt." In wits whof the sd pties [the sd A. as agent for & on behalf of the sd C., & the sd B.] have hrunto set their respive hands the Abstract.

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the deposit, failing to account for it (in such a case as that of a tenant for life selling under the Settled Land Act, or a mortgagor selling a heavily incumbered estate), the deposit is paid to the vendor's solicitor as a stakeholder, or into a bank to the joint account of the solicitors of both parties as stakeholders. In the former case, add here "To Mr. ——, the vendor's solor as stakeholder;" and append a receipt to that effect by the vendor's solicitor at the foot of the contract. In the latter case say, "into the —— Bank, in the jt names of, &c., as stakeholders, but at the risk of the pchaser;" and in the clause as to completion add "but any intt wch may be payable by the sd bank on the deposit shl on complon be pd to the pchaser;" and at the beginning of the clause as to conveyance, insert "upon the sd deposit being reld by the pchaser &." ment of deposit to vendor's solicitor.

day & yr above-written, *or*, "As wits the hands of the sd pties."

Signed by the above-named ——
in the presce of ——.

II.

AGREEMENT *for sale of* LEASEHOLDS, *with usual provisions* (*a*).

Parties. MENDUM OF AGRMT, made the —— day of —— betn A., of, &c. (hinafter called the vendor) of the one pt, & B., of, &c. (hinafter called the pchaser) of the other pt.

Agreement for sale. 1. THE vendor shl sell & the pchaser shl pchase for the sum of £—— ALL that leasehd, &c., *pcels, by a description shortened from the lease*, with their appurts, as the same are held for the residue of a term of —— yrs, commencg from the —— day of ——, grted by an indre of lease [underlease] dated, &c., at the yrly rent of £——, free from all incumbces [except as hinafter mentd] (*b*).

[2. *Provons as to valuon of fixtures, &c.*, p. 273.]

3. *Paymt of pchase-moy & complon*, p. 350.

4. *Posson & intt*, p. 259.

5. *Outgoings, easemts, &c.*, p. 260, *mutatis mutandis*.

Production of lease, &c. [6. THE [under] lease under wch the ppty is held or a copy thof, & counterpts or copies of the leases to & agrmts with the tenants havg been already pduced to the pchaser's

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(*a*) As to the recent enactments affecting contracts for sale, see above p. 252 *et seq.*; as to those relating to leaseholds, see p. 253. See also above, CONDITIONS OF SALE; and for forms of special conditions as to leaseholds, see p. 284. As to sales and purchases by tenants for life, and trustees, &c., see note (*a*) to Precedent I.

(*b*) Add if appropriate, "with the benefit of any existg or future insces agst fire, &c.;" as above, p. 295.

solor, he shl be deemed to pchase with full notice of the contents thof.]

7. The vendor shl, if required, within, *one week*, from the date hrof deliver or send by post to the pchaser or his solor an abstract of his title to the sd premes, commencg with, *&c., as in* p. 276. *Add any special condons as to title, &c., includg condon as to licence to assn, if required, & provons makg recitals evidce, identity, &c., so far as required, see* Condons of Sale, p. 262, *&* Special Condons, pp. 284, 308, *et seq.: last rect for rent evidce of pformce of covts*, p. 270: *convce*, p. 263: *munimts, &c.*, pp. 327, *et seq.: apportionmt of rents*, pp. 307—308: *time for delivery requons, &c.*, p. 265: *compenson for misdescription & non-complice with condons*, pp. 267, 268: *substitutg for the refces to the parlars & condons of sale a refce to* "this agrmt," *& for the refces to the day of sale a refce to the*, "date of this agrmt." In wits, &c. Abstract.

III.

AGREEMENT *for* Sale *of land of any tenure. A* Short Form (*c*).

AGRMT made this —— day of —— betn A., of, &c. (hinafter called the vendor), of the one pt, & B., of, &c. (hinafter called the pchaser), of the other pt. Parties.

1. The vendor agrees to sell & the pchaser agrees to pchase for the sum of £——, *insert short description of the ppty, & in the case of leaseholds referrg to the lease, see Precedents* I. *&* II. Agreement for sale.

[2. *Valuon, short form*, p. 274.]

3. *Paymt of pchase moy & complon*, p. 350.

4. *Posson & intt*, p. 259.

(*c*) See p. 348, note.

5. *Outgoings, &c.*, p. 260.

Abstract. 6. The vendor shl, if required, within one week from the date hrof send by post to ——, the pchaser's solor, at ——, an abstract of his title to the premes commencg, &c., *here add any special condons as to commencemt & evidce of title, &c., see* Special Condons of Sale.

7. *Identity*, p. 262, *Form* 8 (b).

8. *Custody of munimts, &c., see* Special Condons.

9. *Time for deliverg requons*, p. 265.

10. *As to misdescription*, p. 268, *Form* 17 (b) *or* 17 (c).

11. *Non-complice with condons*, p. 268. *In the forms taken from* Condons of Sale, *a refce to* "this agrmt," *will be substituted for the refces to the parlars & condons, & a refce to the,* "date of this agrmt," *for the day of sale.* In wits, &c.

IV.

AGREEMENT *for* Sale *of* Freeholds *for a sum in gross and a* Perpetual Rent Charge, *the purchaser being* Indemnified *against a pre-existing smaller* Rent Charge (*a*).

Parties. *Parties*, A. (hinafter called the vendor), 1. B. (hinafter called the pchaser), 2.

Agreement for sale. 1. The vendor agrees to sell & the pchaser agrees to pchase the inhance in fee simple in posson free from incumbces, except as hinafter mentd, of all, &c., *pcels*, with the appurts thof.

Consideration. 2. The conson for the sd pchase shl be the sum of £——, to be paid by the pchaser on the exon of this agrmt, & a perpetual yrly chief rent of £——, to be secd to the vendor as hinafter mentd.

(*a*) See the form of conditions of sale of building land on chief rent, p. 333

[3. *Provons as to fixtures, &c., to be taken at a valuon*, p. 274.]

4. *Provon as to paymt of the amt of the valuon, if any, & complon*, p. 350, *& as to posson, & intt on the amt of the valuon, if any*, p. 259.

5. *Provon as to easemts, &c.*, p. 260, *adding* "& to an overridg chief-rent of £20 chged on the sd premes, togr with other ppty, by an indre, dated, &c., & to the covts contd in such indre, so far as they affect the premes, but with such indemnity agst the last-mentd rent-chge as is hinafter mentd. Overriding chief rent.

6. *Condons as to abstract & title, &c., see Precedent* I.

7. *Last rect for overridg rent evidce of pformce of covts*, p. 270, *mutatis mutandis*.

[8. *Clause as to expses*, p. 263.]

9. *Clause as to convce*, p. 263, *saying*, "a pper assurce of the premes to the uses hinafter mentd."

10. The assurce of the premes shl be to the use that the vendor, his hrs & assns, shl rece out of the premes a perpetual yrly rent-chge of £40, to commence from the —— day of ——, & to be payable half-yrly on the —— day of —— & the —— day of ——, witht any dedon, the first such paymt to be made on the —— day of —— next, such rent-chge to be issug out of & chged upon the premes, & to be secd by the usual powers (express or implied by statute (*b*)), of distress & entry & rect of rents, & subjt thto to the use of the pchaser in fee simple. The assurce shl contn the follg covts by the pchaser (framed so as to bind his assns) with the vendor, (that is to say): 1st, to pay the sd rent-chge of £40 at the times & in mner afsd: 2ndly (*c*), to maintain & keep in repair the houses & bldgs on the sd land, & to rebuild the same from time to time when necy, & so that Provisions for securing the rent-charge.

(*b*) See the Conv. Act, 1881, s. 44.

(*c*) A covenant to erect buildings will be added if required, see p. 315 *et seq.* As to the remedies under a covenant of this nature, see ante, p. 334, note.

there shl always be upon the sd land houses or bldgs of the clear yrly value of not less than £——, & genlly to pform & observe all the covts & condons by the grantee contd in the sd indre of, &c., other than the covt for the paymt of the sd rent-chge of £20, so far as the same covts & condons apply to the ppty sold. The sd assurce shl also contain a power to the vendor, his hrs & assns, of absolute re-entry (*a*), [durg the lifetime of the sevl pties thto or any of them, & 21 yrs after the death of the last survor of them, & such further time as may not be contrary to any rule of law agst perpetuities or for preventg forfeiture] in case the sd rent-chge of £40 or any pt thof, shl be in arrear for —— calr months, or on the breach or non-observce by the pchaser, his hrs or assns, of the covts & provons to be thrin contd, & on the pt of the pchaser, his hrs & assns, to be pformed & observed or any of them. The assurce shl also contain covts by the vendor (*b*) for paymt of the sd rent-chge of £20, & to pform & observe all the covts by the grantee & condons contd in the sd indre of, &c., so far as the same ought to be pformed & observed in respt of the lands & premes comprd in such indre, other than the premes hby agrd to be sold, & also a power to the pchaser, his hrs & assns, to retain out of the sd rent-chge of £40 any moys wch he or they may be called upon to pay & shl actually pay in respt of the sd rent-chge of £20, includg any expses incurred in conseqce of the non-paymt thof. *Other clauses as in ordinary contracts for sale, see Precedent* 1. In wits, &c.

(*a*) As to the power of re-entry and the words in brackets, see p. 334, note.

(*b*) If the vendors are trustees the liability to enter into these covenants should be negatived, and the purchaser be bound to be content with such other indemnity as the case may admit of.

V.

PROVISIONAL CONTRACT *for* SALE *of* FREEHOLDS, *subject to the* APPROVAL *of the* COURT *being obtained under the* SETTLED ESTATES ACT, 1877 (*c*).

Parties, A., beneft owner in posson of the este hinafter mentd, under the will of her late husbd X., deced, & B. & C., trees of the sd will (hinafter called the vendors), 1. D. (hinafter called the pchaser), 2. Parties.

1. Subjt to the approval of the High Ct of Justice being obtained as hinafter mentd, the vendors agree to sell, & the pchaser agrees to pchase, for the sum of £——, the inhance in fee simple in posson free from incumbces of, *pcels*, with the appurts thof. Agreement for sale.

2. The title of the vendors to the sd premes havg been already inquired into, & approved of by the pchaser (subjt to the 9th clause hrof), shl be accepted by him witht further investigon. Purchaser to accept title (*d*).

3. The pchaser shl on or bfe the —— day of —— next pay the pchase-moy to the sd trees, or into the Bank of England, as may be directed by the order of the sd Ct in that behalf made upon the applicon hinafter mentd; & if the same is not so pd, the pchaser shl pay intt (less income-tax) thron, at the rate of £5 p.c. p.a. from the sd —— day of —— next to the day on wch the same is actually pd. Payment of purchase-money and interest.

(*c*) 40 & 41 Vict. c. 18. The Court had no power under the Act to direct the sale to be made out of Court (*Re Harvey*, 21 Ch. D. 123), but by R. S. C., 1883, Order 51, Rule 1 A., as modified by the Rules of December, 1888, Rule 9, this may now be done. Recourse to the Settled Estates Act, 1877, is now rare, having regard to the very extensive powers of sale, &c., out of Court, now given to limited owners by the Settled Land Act, 1882; but there are exceptional cases of estates in settlement to which that Act does not apply, and for which the former Act may be made use of. As to who may apply under the Act, see *Taylor* v. *Taylor*, 20 Eq. 297, 1 Ch. D. 426, 3 Ch. D. 145; *Vine* v. *Raleigh*, 24 Ch. D. 238, and *infra* p. 504. As to sales under the Settled Estates Act, 1877.

(*d*) This clause is of course special.

4. *Posson & convce, &c., see* pp. 259, 263.

5. *Provon for retention of munimts relatg to other ppty. See* CONDONS OF SALE, pp. 327 *et seq.*

6. *Outgoings, easemts, &c., see* p. 260 *or* p. 361.

Provision as to identity, misdescription, &c. (*a*).

7. THE pchaser havg investigated the title, & havg satisfied himself as to the identity of the ppty agrd to be sold with the ppty desed in the munimts, & havg also satisfied himself of the correctness of the description contd in this agrmt, shl not require any further evidce of such identity, or make any objon or claim to compenson in respt of any want of identity, or any error or omission in the description hrin contd wch may hrafter be discovered.

Provision for payment of all expenses by purchaser (*a*).

[8. THE costs of the vendors & all other pties, as betn solor & client, of or incidental to the sd sale, & the convce, & this psnt contract, & the applicon to the Ct hinafter mentd, includg the expses of the negotions preliminary hto, & of takg counsel's opinion as to the power of the vendors to sell, & of the preparon of the abstract, & makg out the title, & of all surveys & valuons, & all other chges & expses incurred in carryg out the sale, or in relon thto, & includg also the expses of the interim investmt of the pchase-moy in the funds or orwise pendg the re-investmt thof in the pchase of land or orwise, as directed by the Settled Estates Act, 1877, shl be borne by the pchaser, & such costs & expses (other than those of the pchaser) shl be pd by him to the vendors or their solor upon the pchase being completed, & such investmt of the pchase-moy as afsd being made, or in the event of the sanction of the sd Ct not being obtained on or bfe the —— day of —— next, as hinafter mentd, then on such last-mentd day.]

Vendors to make application for sanction of Court(*b*).

9. AN applicon shl forthwith be made by the vendor to the sd Ct for the sanction of the Ct to the sd sale under

(*a*) These clauses are of course special.

(*b*) The following is a similar clause, where the purchase is made by trustees under the sanction of the Court:—

Purchase by trustees.

"The pchasers shl forthwith apply for & endeavour to obtain the sanction of the Chancery Divon of the High Ct

the Act afsd; and in case such sanction shl not be obtained to this contract, eir in its psnt terms, or with such varions as may be assented to by both pties, on or bfe the —— day of —— next, then this contract shl be void [save & except the last precedg clause].

10. If the pchaser shl refuse or neglect to comply with any of the stipulons of this contract, the vendors shl be at liberty to annul the same, & shl thrupon be entled to recover from the pchaser all expses hinbfe made payable by him, or occasioned by his default. In wits, &c. Power to vendors to annul on default of purchaser.

VI.

AGREEMENT *for* Sale *of* Freeholds *to a* Railway Company. Variations *for* Leaseholds *or* Copyholds, *and where the* Sale *is made under the* Settled Land Act, 1882 (*c*).

Parties, A. (hinafter called the vendor), 1. [B. & C., *vendor's trees*, 2.] D., as agent for & on behalf of the —— Rly Co (hinafter called the Co), 3. Parties.

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of Justice to this contract in an action of —— *v.* ——, being an action for the admon of the este of the late ——, & if such sanction shl not be obtained to this contract in its psent form or with such modificons as may be assented to by both pties bfe the —— day of —— next, this contract shl become void and all costs of & incidental to such application & any order made thron shl be pd by the pchasers or out of their trust este."

(*c*) See also the clauses contained in form xxiii., p. 65. See the Lands Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 18, and the Amending Acts, 23 & 24 Vict. c. 106, and 32 & 33 Vict. c. 18. Where the vendor is a tenant for life or limited owner, or an infant seized in fee, the sale, if the title is otherwise good, may now be generally made, to the advantage of both the vendor and the company, under the Settled Land Acts, 1882 to 1890, so as to avoid the necessity for a valuation, and payment of the purchase-money into Court under the L. C. C. Act, 1845, ss. 9 and 69; see As to sales by limited owners and infants.

Agreement for sale.

1. By virtue of the powers, & subjt to the provons of the —— Rly Act, 18——, [& the —— Rly Act, 18——, or one of them], & of the Public Acts incorpd thwith, the vendor agrees to sell & the Co agree to pchase for the pposes of the rly & works authorised by the sd first-mentd Act, for the sum of £——, the inhance in fee-simple in posson, *or*, "the inhance accdg to the custom of the manor of —— in the coy of —— in posson," *or*, "the leasehd este & intt of the vendor as hinafter stated," of & in ALL THAT piece or pcel of land situate in the parish of ——, in the coy of ——, contg —— acres, &c. [with the messe & outbldgs erected & built thron, or on some pt throf], known as, &c., & nod —— in the plans & books of reference thto of the rly authorised by the sd first-mentd Act relatg to the sd parish deposited with the Clerk of the Peace for the sd coy of —— [*if so intd say for freehds*, "togr with all the mines & minls if any, in or under the same," *or*, "togr with all minls, beds of, &c., &c., substces & soil on or within —— ft of the surface of the sd lands, but exclusive of all mines or minls lying at a lower depth than —— ft under the surface thof" *or*, *for copyhds or leasehds*, "togr with all the intt (if any) of the vendor in the mines, &c." (*a*)] [*if leasehd add*, all wch premes are held by the vendor, togr with other ppty, for the residue now unexpired of a term of —— yrs from the —— day of ——, grted by an indre of lease dated, &c., at the yrly rent of £—— (whof £—— shl be the apportioned rent payable in

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the clause providing against the purchase-money being paid into Court. If the sale purports to be made under the S. L. Acts the clause as to costs (p. 365) should be inserted; otherwise the vendor may lose the benefit of the L. C. C. Act as to costs. As to the S. L. Acts, see the references above, p. 349, note.

(*a*) See the Railways Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 20, ss. 77—82; *Midland Rail. Co.* v. *Haunchwood, &c., Co.*, 20 Ch. D. 552; *Midland Rail. Co.* v. *Miles*, 30 Ch. D. 634, 33 Ch. D. 632; *Midland Rail. Co.* v. *Robinson*, 37 Ch. D. 386; 15 App. Cas. 19; *Consett Waterworks Co.* v. *Ritson*, 22 Q. B. D. 318, 702; *Glasgow Corp.* v. *Farie*, 13 App. Cas. 657; and as to expressly excluding minerals if so intended, see the Conv. Act, 1881, s. 6.

respt of the premes hby agrd to be sold) & subjt to the covts in the sd indre of lease contd].

2. The premes are sold subjt to all quit & other rents, incidents of tenure, & easemts affectg the same, & to an indre of lease, *or*, "underlease," dated, &c., of the premes hby agrd to be sold, togr with other ppty, for a term of —— yrs from the —— day of ——, at the yrly rent of £——, of wch £—— shl be the apportioned rent payable in respt of the premes hby agrd to be sold, but free from all other incumbces. Outgoings, easements, &c.

3. The sd pchase moy shl be considered to include satisfon & compenson for all damage (whether permanent, temporary, or recurrg), loss, or inconvence occasd by severce or orwise, injuriously affectg the vendor's other ppty, in the exercise of the powers of the sd Acts, or by removal, or loss of trade or goodwill [except structural damage & injury to any adjoing lands or bldgs caused by the constron of the sd rly, or orwise done or permitted by the Co,] & shl be in full satisfon for all communicons, gates, bridges, fences, culverts, drains, waterg-places, ways, passages, works, & things over, under, across, or near to the sd rly [except such as are hby specially provd for] wch might orwise be required to be made or done under any of the sd Acts for the better enjoymt, proton, or accommodon of the vendor's other ppty. Purchase-money to include compensation for damage by severance, &c. (*b*).

[4. The vendor hby consents to such alterons of levels & works as may be found convenient in the constron & maintce of the sd rly & works.] Levels.

[5. The sd pchase-moy shl also include all claims (except for crops as hinafter provd for) on the pt of the tenants or occupiers of the premes (whether under the Agricultural Holdings (England) Act, 1883, or orwise), & if the Co shl require posson bfe the crops are matured, they shl pay the value of such crops to the tenants or occupiers of the land, posson whof is required, or orwise allow time for the Tenants' interest.

(*b*) See the Lands Clauses Consolidation Act, 1845, s. 63, and the Railways Clauses Consolidation Act, 1845, ss. 6, 16.

same to mature & be removed. The Co shl give due notice to the tenants & occupiers of the sd lands & premes to treat as provd by the sd Acts, & shl deliver all claims made by any such tenants & occupiers in respt of their intt in the sd lands & premes to the vendor, who shl settle the same upon such terms in all respts as he may think fit, he, the vendor, hby agreeg to indemnify the Co from paymt thof.]

Provision as to purchase-money where vendor is limited owner (*a*).

[6. *If the vendor is a limd owner havg no power to sell except under the Lands Clauses Act, insert the follg:*—If the amt of pchase-moy & compenson determined psuant to the provons of the Lands Clauses Consolidon Act, 1845, shl exceed the sd sum of £——, then this agrmt shl be construed as if the amt so determined had been substituted hrin for the sd sum of £——.]

Purchase-money to be paid to trustees (*b*).

[7. The vendor, psuant to & in exercise of the power in that behalf given to him by the Settled Land Act, 1882, hby elects that the sd pchase moy of £—— shl be pd by the Co to the pties hto of the second pt as trees of his settlemt, & not into Ct.]

Accommodation works.

[8. The Co shl, within —— yrs from the date of this agrmt, exte, & for ever thrafter maintain, at their own expse, the accommodon works specified in the schdle hto for the benefit of the vendor, his hrs & assns, or other the psons who may, for the time being, be entled to the —— farm. The convce to the Co shl contain a covt to the effect of this psnt clause, & a duplicate thof exted by the Co shl be delivered to the pchaser on complon.]

Abstract.

9. The vendor shl, within —— days from the date hrof, deliver to the solors of the Co an abstract of title to the premes hby agrd to be sold, but to such extent only as the sd solors shl require, & produce the deeds & munimts of title & other evidces in proof of the same, & the vendor &

(*a*) See the Lands Clauses Act, s. 9, as to the necessity for strict compliance with which see *Bridgend, &c., Co.* v. *Dunraven*, 31 Ch. D. 219. In the case of a tenant for life selling under the Settled Land Act, 1882, the next clause will be substituted for this.

(*b*) See the Settled Land Act, 1882, s. 22.

all other necy pties shl make & exte all pper & necy assurces to the Co, or as they shl require, of the premes with the usual statutory covts for title & for prodon [& safe custody] of deeds & munimts not handed over to them.

Possession (c).

10. The Co shl be at liberty, subjt to the rts of the tenants, to take posson of the premes at any time bfe complon of the pchase on givg to the vendor or his solors —— days' notice in writg under the hand of the secretary or solor of the Co, & (if required) depositg the sd pchase & compenson-moy in the jt names of the Co or their nominee & the vendor in the —— Bank, where the same shl remain at the risk of the Co until the pchase shl be completed, when the same shl be pd to the vendor or other pties entled thto or orwise into Ct for their benefit, as provd by the sd Acts, the Co being entled to any intt allowed by the sd bank, & such entry shl not be an acceptce of the title [*or*, The Co shl not pceed to take posson of any pt of the sd lands & premes witht eir the written consent of the vendor, or takg such pcdgs for obtaing posson as provd by the sd Acts, & in case posson of the premes shl be taken by the Co bfe the vendor shl have deduced a good title to the whole of the premes, the pchase-moy, or a proportionate pt thof in respt of the premes to wch a good title shl not have been deduced, shl, pendg the investigon of the title, be deposited at the risk of the Co in a bank to be approved by the vendor, in the jt names of the vendor & a nominee of the Co, & shl be pd to the vendor or other pties entled thto with intt thron at the rate of —— p.c. p.a. from the time of the deposit, upon a good title being deduced as afsd, or in default of such title being deduced shl be pd into Ct psuant to the provons of the sd Acts, with intt as afsd.]

Alternative clause.

Completion.

11. The pchase shl be completed on or bfe the —— day of —— next, at the office of Messrs. ——, at ——.

(*c*) This clause enables the company to commence their works; *Bolton* v. *London School Board*, 7 Ch. D. 766. As to the right of the company to take possession, see the Lands Clauses Consolidation Act, 1845, ss. 84, 85; *Bygrave* v. *Metropolitan Board of Works*, 32 Ch. D. 147.

Interest on unpaid purchase-money.

12. The Co shl pay to the vendor or other pties entled thto intt at the rate of £— p.c. p.a. on the sd pchase & compenson-moy, or on so much thof as shl remain unpd [*where the varion in clause* 10 *is used, say*, or undeposited] from the time of their taking posson or from the sd —— day of —— next, whichever shl first happen, until the complon of the pchase & paymt of the sd pchase & compenson-moy, or the balce thof; [*or*, The Co havg, with the consent of the vendor & witht prejudice to the rts & liabilities of the respive pties with respt to title as betn vendor & pchaser, taken posson of the portions of the sd lands nod resply —— on the sd plan, on the —— day of ——, & of the remr of the sd lands on the —— day of ——, shl pay intt at the rate of, &c., on the respive sums of £—— & £——, being the apportioned pchase-moy for such respive portions of the sd lands from the respive dates when posson thof resply was taken as afsd until the actual complon of the pchase].

Variation.

Apportionment of land-tax, &c.

[13. The land-tax & tithe rent-chge shl be apportioned, if necy, under the provons of the sd Acts at the expse of the Co.]

Add any provons as to title, identity, compenson for misdescription, custody of deeds, &c., wch may be applicable, as in ordinary contracts for sale (*a*).

Release, *or*, reservation, of right of pre-emption (*b*).

14. The vendor shl rele to the Co any rt of pre-emption to wch he may be entled under the Lands Clauses Consolidon Act, 1845, in respt of the premes [*or*, As to any pt of the premes wch shl not be required for the pposes of the sd Co, the vendor, his hrs or assns, shl have the like rt of

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Conditions as to title on sales under Lands Clauses Acts.

(*a*) In agreements for sales to companies purchasing under the Lands Clauses Acts, it is rarely necessary to make any stringent conditions as to the evidence to be given in support of the title, for as all the expenses are thrown on the company, it rarely happens that they make unreasonable requisitions. The main point to be attended to on the part of the vendor is to guard by contract against the money being paid into Court in such a manner as to excite any dormant claims.

(*b*) The first of these alternative clauses applies to rural, the second to urban lands; see the Act, s. 128.

pre-emption as he or they wd have been entled to under the Lands Clauses Consolidon Act, 1845, if such lands had not been built upon or used for bldg pposes, & no pt of such superfluous lands shl in the meantime be let by the Co on lease or from yr to yr or orwise to any pson other than the vendor, his hrs or assns].

Costs.

15. The Co shl, on complon of the pchase, pay the vendor's costs of & incidental to this agrmt & of deducg & verifyg his title, & of the assurce to the Co & all other costs & expses of the vendor as provd by the Lands Clauses Consolidon Act, 1845, [togr with the sum of £—— for the costs & chges of his surveyor & solor of & attendg the makg out & prosecutg his claims agst the Co, inclusive of the costs of this agrmt].

Provision for failure of agreement.

16. In case this agrmt shl in any respt fail to take effect, whether owing to the default of eir pty or orwise, or in case any mre relatg to the pchase or takg by the Co of the premes is not hrin provd for, the respive pties hto may, so far as respts the sd lands & premes hinbfe descd, at any time exercise or have recourse to such of the powers & provons of the sd Acts relatg to the pchase or takg of land by the Co, whether by agrmt or by compulsory means, as may be applicable to the case. In wits, &c.

VII.

AGREEMENT *for* Sale *of* Goodwill *and* Trade-mark (*c*). *The* Purchase Money *being payable by* Instalments.

Parties.

Parties, A. & B. (hinafter called the vendors), 1. C. (hinafter called the pchaser), 2.

As to trade marks, &c.

(*c*) See the Patents, Designs, and Trade Marks Acts, 1883 to 1888 (46 & 47 Vict. c 57; 48 & 49 Vict. c. 63; 51 & 52 Vict. c. 50), and the Trade Marks Rules, 1883, and the Instructions issued by the Comptroller in

Agreement for sale.

1. The vendors agree to sell & the pchaser agrees to pchase for the sum of £—— the goodwill of the business known as "——," being one of the businesses carried on by the vendors in co-ptnp at ——, togr with the rt to carry on such business under the name or style of ——, & also the exclusive rt to use the brand or trade mark —— on, *certn articles*, reservg to the vendors the right to use the sd brand or trade mark on, *certn other articles*.

Vendors not to carry on trade, &c. (*d*).

2. The vendors shl not nor shl eir of them eir alone or jtly or in ptnp with any other pson or psons whomsr & eir directly or indirectly carry on, manage, or be concerned or intted in the business of —— within —— miles from ——

May, 1884. As to the law of trade marks and patents see Goodeve on Personal Property, 2nd ed., by Elphinstone & Clark, Chapters XIII. and XIV.

By the Act of 1883, s. 70, a trade mark when registered can only be assigned in connection with the goodwill of the business concerned in the goods for which it has been registered, and is determinable with that goodwill, *i.e.*, it is conceived, ceases to be a trade mark within the meaning of the Act *ipso facto* on the determination of the goodwill. S. 87 provides for the registration of assignments of registered trade marks in the names of the proprietors; and see further as to registration of assignments, Rules 34 *et seq.*, and paragraph 42 of the Instructions. As to entering on the register a note of an agreement, as in this precedent, restricting the use of a trade mark, see *Re Mitchell*, 28 Ch. D. 666.

As to using without authority the name or a colourable imitation of the name of a person carrying on business in connection with goods protected by a trade mark, or using the name of a fictitious person or of some person not *bonâ fide* carrying on business in connection with such goods, see the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), ss. 2 and 3, sub-s. 3.

As to sale of goodwill.

(*d*) As to agreements in restraint of trade, see p. 245, note. As to the right of the vendor of a goodwill to carry on business and solicit the customers, see *Pearson* v. *Pearson*, 27 Ch. D. 145; *Vernon* v. *Hallam*, 34 Ch. D. 748; *Re Irish*, 40 Ch. D. 49 (a case of a manager of a business sold under the Court). An assignment of the goodwill of a business carries with it the right for the purchaser to use the vendor's name, so far as such user does not expose the vendor to any liability by holding him out as the real owner of the business; see *Levy* v. *Walker*, 10 Ch. D. 436; *Gray* v. *Smith*, 43 Ch. D. 208; *Thynne* v. *Shove*, 45 Ch. D. 577. If the vendor is not restrained from carrying on the business elsewhere, the following may be added at the end of the clause (as to which see *Baines* v. *Geary*, 35 Ch. D. 154):—"And will not at any time

afsd [*or*, in any pt of the United Kingdom] nor shl they or eir of them authorise their or his names or name or the name or style of —— & Co to be used for the ppose of any such business by any pson or psons within the limits afsd for the period of —— yrs from the date of this agrmt, unless the pchaser shl make default for 30 days in paymt of any of the instalmts of the sd pchase moy, or the intt thron or any pt thof as hinafter mentd: And the vendors or eir of them will within such period (except in case of such default as afsd), if & when required by the pchaser, recommend the sd intd new firm to the customers of the sd late firm.

Payment of purchase-money by instal-ments (*e*).

3. The pchase-moy, with intt at the rate of —— p.c. p.a. from the —— day of —— next upon the unpd pt thof for the time being, shl be pd by the pchaser to the vendors as follows, namely, the sd pchase-moy by four eql instalmts of £—— each, payable as follows, &c., & the intt on the pt of the sd pchase-moy for the time being remaing unpd shl be pd on the same respive days: Provd that if any instalmt of ppal or intt, or any pt thof, shl remain unpd after 30 days from the day so appted for the paymt thof, then the whole of the sd pchase-moy, or of the unpd pt thof, with the intt thron, shl become immedly due & payable.

Vendors' names may be used in proceed-

4. So long as the pchaser shl pform in all respts his pt of this agrmt, the vendors shl, in the event of any infringemt by any other pson or psons of the sd brand or trade mark

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solicit any of the customers of the sd late firm." As to custody of deeds, &c., on an assignment of a solicitor's business see *James* v. *James*, 23 Q. B. D. 12. As to what stipulations may be agreed to on the sale of a business by the vendor's attorney acting under a general power, see *Hawksley* v. *Outram*, [1892] 3 Ch. 359.

As to lien for unpaid purchase-money.

(*e*) See another form providing for payment by instalments, *infra*, p. 377. There is no implied lien for unpaid purchase-money on chattels, nor, it is conceived, on goodwill comprised in the sale of a business; and an express lien or charge (so far as concerns chattels) would require compliance with the Bills of Sale Acts, 1878 and 1882; see *Coburn* v. *Collins*, 35 Ch. D. 373. As to a sale in consideration of the vendor receiving a share of the profits by way of annuity, see the Partnership Act, 1890, 53 & 54 Vict. c. 39, ss. 2 & 3, which by s. 48 repeals Bovill's Act, 28 & 29 Vict. c. 86.

ings for infringement.

—— by the use thof on any, *specified articles*, at the reqt of the pchaser, & upon being previously pperly indemnified agst all costs, damages, & expses in respt thof, allow their names to be used in any pcdgs wch may be advised agst the pson or psons guilty or suspected of such infringemt.

Title and conveyance.

5. THE vendors shl on or bfe the —— day of —— next, show a good title to the sd goodwill & trade mark to the reasble satisfon of the pchaser, & they & all other necy pties if any shl, upon or at any time after the paymt of the sd pchase moy in full, exte & do all such instrumts & things as shl be reasbly required by the pchaser, & at his expse, for vestg in him the sd goodwill & the rt to use the sd trade mark, & for orwise carryg into effect this agrmt (*a*). IN WITS, &c.

VIII.

CONTRACT *for Sale of a* BUSINESS *and the* ASSETS *thereof as a* GOING CONCERN *by the* LIQUIDATOR *of a* COMPANY *under a Voluntary Winding up to another* COMPANY (*b*).

Parties.

PARTIES. The X. Co Limd in liquidon (hinafter called the vendors) by A., of, &c., the liquidator, 1. The Y. Co Limd, whose registered office is at, &c. (hinafter called the pchasers), by B., of, &c., their duly authorised agent, 2. Whby it is agrd as follows:

As to stamp.

(*a*) Goodwill—and no doubt also a trade mark, being "property" within the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59 (see *Potter* v. *Commissioners of Inland Revenue*, 10 Ex. 147; *Commissioners of Inland Revenue* v. *Angus*, 23 Q. B. D. 579, decided under former Acts); and not being within the exemption of "goods" in that section, and under the head "agreement" in the Act (*South* v. *Finch*, 3 Bing. N. C. 506), this agreement is liable to duty under that section; see *ante*, p. 349.

(*b*) See the last Precedent, and notes thereto: as to the powers of a liquidator, see the Companies Act, 1862, ss. 133, 135.

1. THE vendors shl sell & the pchasers shl pchase for the sum of £—— & upon the terms & subjt as hinafter mentd: 1. All the —— works with the freehd & leasehd lands, &c., known as, &c., & the other lands, bldgs, water rts, way-leaves, hds & premes held in connection thrwith situate, &c., wch are specified in the 1st & 2nd pts of the schdle hrto. 2. All fixed & moveable machy, engines, plant, tools, stores, furniture, horses, carts, barges & vessels belonging to or used by the vendors in connection with the sd works, lands, bldgs & premes in the same condon as the same resply were on the —— day of —— last. 3. All patent rts & trade marks belonging to the vendors in connection with their sd business, & the goodwill of the sd business as a going concern, with the rt to use the name of the vendors in connection thrwith, & 4. The business books of the vendors at their place of business at ——. Agreement to sell.

2. THE sale shl include the benefit of any current insurces agst fire of any of the ppties included in the sale, &c. *See p.* 295, *form* XVII. Insurances.

3. THE ppties are sold subjt to the rents, covts, condons, reservons & exceptions contd in the leases or agrmts for leases under wch the leasehd portions thof are held, & to any subsistg undertenancies of any houses, cottages, or other pts of the ppties, & to all outgoings, easemts & rts affectg the same. Sale subject to rents, easements, &c.

4. [*Provon as to rents & outgoings up to & after complon & apportionmt, &c., & as to leases, &c., havg been produced prior to the contract. See* CONDONS OF SALE.]

5. THE sd pchase moy shl be apportioned betn the ppties for the ppose of convce or transfer & stamp duty as follows, Apportionment of purchase-money (*c*).

(*c*) As to apportioning purchase money for stamp duty, section 58 (1) of the Stamp Act, 1891, enabling the parties to make the apportionment as they think fit, only applies where all the properties comprised in the sale are actually conveyed, and not to a case such as the above where the sale includes chattels or other things not requiring a conveyance. But in that case there can be no objection to the apportionment being made by the contract, if done fairly and *bonâ fide* according to the estimated As to apportioning the purchase-money, and stamp duty.

namely, £—— shl be the price of the freehd ppties, £—— shl be the price of the leasehd ppties, £—— shl be the price of the patent rts, & £—— the price of the trade marks, & the remr of the sd pchase moy shl be the price of the other ppties included in the sale.

Possession. 6. The pchasers shl be at liberty forthwith or at any time after the signature of this agrmt to enter into posson of the sd ppties, & to have the use thof for the ppose of the sd business pendg the complon of the pchase, upon their paying to the sd liquidator the sum of £—— as a deposit & in pt paymt of the sd pchase moy, but such entry shl not be deemed to be an acceptce by the pchasers of the vendors' title, or a waiver of any objon or requon wch they might orwise be entled to make in respt thof. In the event of such posson being taken the pchasers shl pendg the complon of the pchase, pay all expses & outgoings incurred in respt of the premes, other than rent, rates, & taxes, up to the time fixed for complon, & shl keep the same in pper repair, order, & condon, reasble wear & tear excepted, & in case this agrmt for sale shl be annulled the pchasers shl forthwith redeliver posson of the sd premes to the vendors in such repair, order, & condon as afsd, the sd deposit being in that event repd to the pchasers witht intt & subjt to the dedon thrfrom of any moys wch may be payable by the pchasers to the vendors under this agrmt or in respect of any breach thof.

Completion. 7. The pchase shl be completed & the pchase moy or the balance thof pd to the sd liquidator on the —— day of ——, as from wch day the pchasers shl on paymt of the pchase moy be entled to the posson of the premes unless posson shl have been previously given as afsd, & if the pchase moy or the balce thof is for any reason not then pd, the pchasers shl pay intt thron on so much thof as remains unpd from that day until complon at the rate of, &c.

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values. As to the liability of the contract itself to *ad valorem* duty see p. 349, note. In the case from which the above Precedent was taken only a 6*d*. stamp was affixed to the contract.

8. Unless & until posson of the premes shl be given to the pchasers as afsd, the sd business will be continued by the sd liquidator as far only as regards the exon & carrying out of now pendg orders & contracts until the complon of the pchase, and in case the same is not completed on the sd —— day of ——, the same shl from that date be deemed to be so continued on behalf of the pchasers, & the then pendg orders or contracts shl be equitably apportioned on that day as regards the benefit & burden thof betn the vendors & pchasers. Carrying on of business (*d*).

9. Upon the complon of the pchase a circular in a form to be approved by the vendors' solors, shl be sent by the vendors to all their customers & agents announcg the transfer of the sd business & goodwill to the pchasers. Circular.

10. Upon paymt of the pchase moy or the balce thof & intt thron, if any, the pchasers shl be entled to pper assurces or transfers of the sevl ppties included in the sale from the vendors, & other necy pties, if any, to be prepared by & at the expse of the pchasers. Conveyance.

11. [*Condons as to title to the freehd & leasehd ppties.*]

12. [*Arbitron Clause. See* Arbitron.] In wits, &c.

[*Schdle.*]

IX.

CONTRACT *for* Sale *of* Next Presentation, *the Vendor being the* Incumbent (*e*).

Parties, A., vicar of, &c., in the Coy of —— (hinafter called the vendor), 1. B. (hinafter called the pchaser), 2. Parties.

(*d*) See also the forms above, at p. 343, and *post*, p. 378.

(*e*) As to the law see the references in the notes to precedent of conveyance of an advowson or next presentation, Conveyances on Sale. As to the title to be shown, see 1 Dart, V. & P. p. 334.

Agreement to sell. 1. THE vendor agrees to sell & the pchaser agrees to pchase the first & next nominon, presenton, & free dispon of & to the vicarage & parish church of, &c., afsd, wch shl or may happen to accrue or arise upon or in consequce of the vacancy or avoidce of such vicarage or living by death or relinquishmt, or by whatsr other means the sd church shl first or next happen to be void at the price of £——.

Title. 2. THE vendor is or claims to be absolutely entled to the advowson of the sd vicarage subjt to the contingency of his title thto being displaced by his havg issue male, & except that the legal estate is outstandg in the trees or tree of an indre dated, &c., & the title havg been submitted to the pchaser, the same shl be deemed to be accepted by him subjt as afsd witht further investigon.

Completion. 3. THE pchase shl be completed at the office of ——, the vendor's solor at, &c., on the —— day of —— next, on wch day the vendor shl on paymt of the sd pchase moy in mner hinafter mentd exte a pper assurce of the next presenton to the sd benefice to the pchaser subjt to the afsd contingency & to the legal este remaing outstandg, such assurce to be prepared by & at the expse of the pchaser.

Bond. 4. THE pchaser shl on the complon of the pchase give to the vendor a bond conditioned for the paymt to the vendor of the sd pchase moy within 6 calr months after the vacancy of the sd living, with intt thron in the meantime at the rate of 4 p.c. p.a. payable qtrly, the first qtrly paymt thof to be made on the —— day of ——.

Vacancy before completion. 5. IN the event of a vacancy occurrg in the sd living by the resignon or death of the vendor bfe the complon of the pchase, the vendor or his trees or tree shl on the execon by the pchaser of the sd bond psnt thrto such pson being duly qualified as shl be nominated by the pchaser.

Legal estate. 6. UPON the death of the vendor witht havg had male issue, a conveyce of the legal este of the sd next presenton to the sd benefice to the pchaser, his hrs or assns shl, if required by him or them, be procured at his or their expse.

Next pre- 7. IF the next presenton to the sd benefice shl devolve on

the Crown by reason of the promotion of the vendor to a bishopric, this agrmt & the bond to be given as provd by paragraph 4 shl be void, and any intt wch shl have been pd by the pchaser to the vendor under the sd bond shl be repd. sentation devolving on Crown.

[8. The pchaser shl keep the vendor harmless & indemnified from all actions & other pcdgs in regard to & from all claims in respt of dilapidons in, upon, or about the sd church & vicarage of —— afsd, & the bldgs, lands, grounds, & appurts thof, & whether such actions or other pcdgs be instituted & such claims shl arise durg the time the vendor shl be vicar of —— afsd, or upon the sd benefice next becoming vacant, & a covt to this effect shl be inserted in the sd convce.] In wits, &c. Dilapidations.

X.

AGREEMENT extending *the* Time for Completion *of a Purchase and otherwise modifying the Contract.* Supplemental *to the original Contract* (*a*).

ARTICLES of Agrmt made, &c., betn A. (hinafter called the vendor), of the one pt, & B. (hinafter called the pchaser), of the other pt, supplemental to an agrmt dated, &c., & made betn the same pties for the sale by the vendor to the pchaser of the —— este for the sum of £—— (hinafter called the origl agrmt), IT IS HBY AGRD as follows:—

1. The time for complon of the sd pchase shl be extended from the —— day of ——, being the day mentd in the origl agrmt, to the —— day of ——, & in this respt time shl be of the essce of the contract, but nevs the pchaser may complete the pchase on any earlier day, on givg 14 days' notice of his inton in that behalf to the vendor or his solor. Extension of time for completion.

(*a*) This may be used for a tenant for life selling under the Settled Land Acts; see the power in s. 31 of the Act of 1882, to vary contracts.

Requisitions.

2. The pchaser havg accepted the title shown by the vendor as a good & perfect title accdg to the origl agrmt, no further requon or objon in respt of the title, except as to any mre arisg after the date of this agrmt, shl be made by him.

Possession and rent in lieu of interest.

3. The pchaser may forthwith, or at any time, enter upon & take posson of the premes, as tenant of the vendor, at the annl rent of £—— (being equivalent to intt on the sd pchase-moy at the rate of —— p. c. p. a.), such rent to commce from the date of this agrmt, whether such posson is taken or not, & to be pd on the complon of the pchase or on demand, & to be accepted by the vendor in satisfon of the intt on the pchase-moy payable under the origl agrmt, the pchaser paying all outgoings [& keepg the bldgs pperly insured agst fire, & not makg any structural alterons thrin, *if leasehd add*, " & pformg the covts of the lease "] pendg complon.

Purchaser to pay the difference in case consols rise.

4. If the price of £2 15*s.* p. c. Consold stk shl, on the day of actual complon of the pchase, be higher than the price thof on the —— day of ——, *the day of complon under the origl agrmt*, the pchaser shl, togr with the sd pchase-moy & rent, pay to the vendor such a sum of moy as shl be eql to the price or value of the diffce betn the amt of such consold stk wch the sd pchase-moy wd have pchased on the sd —— day of ——, & the amt of stk wch the same sum will pchase on the day of actual complon of the pchase, at the highest price of the day in each case.

Costs.

5. All the costs & expses incurred by both the sd pties in relon to the negotion, preparon, & exon of this agrmt shl be pd by the pchaser.

Original agreement as varied to be in force.

6. The origl agrmt, as hby varied, shl remain in full force, & shl be carried into effect in the same mner as if the provons of this agrmt had been inserted thrin. In wits, &c.

XI.

AGREEMENT *for* ENFRANCHISEMENT *of* COPYHOLDS, THE MANOR *and the* COPYHOLD *being both in settlement* (*b*).

PARTIES, A. (Lord of the manor of —— in the coy of ——), 1. B., *Copyholder*, 2. WHAS the sd A. is or claims to be seised of the sd manor of —— as tenant for life in posson under the will dated, &c., & proved, &c., of X. deced : AND WHAS the sd B. is or claims to be equitable tenant for life under a settlemt dated, &c., of the hereds hinafter descd, wch are copyhd of the sd manor, & of wch the trees of the sd settlemt are the tenants on the Ct Rolls : Recitals. Title of lord and of copyholder.

NOW IT IS HBY AGRD as follows :—

1. IN conson of the sum of £—— to be pd by the sd B. or his trees by diron of the sd A. to the trees of the sd will of the sd X., the sd A. shl sell & convey to the sd B. or his sd trees, the freehd of ALL, &c., *pcels from the Ct Rolls*, togr with the mines & minls under the same premes, & all commonable & other rts, easemts & appurts now annexed to Agreement for enfranchisement.

(*b*) This form is for a case in which the parties are able and willing to enfranchise without recourse to the Copyhold Acts, as to which, and especially the Act of 1887, see Brown on the Acts; and as to Crown manors, see 48 & 49 Vict. c. 79, s. 4. By the Settled Land Act, 1882, s. 3 (ii.), a tenant for life of a manor may enfranchise any copyhold or freehold tenement held of the manor by selling the freehold or seignory to the tenant, with or without an exception or reservation of mines or minerals, or (s. 4 (7)) a regrant of any right of common or other right, easement or privilege, appendant or appurtenant to or held with the land enfranchised (which would seem to include any customary right); and the general provisions of the Act relating to sales apply to this case. By the same Act, s. 21 (v.) and s. 33, where a copyhold or freehold tenement held of a manor is in settlement, capital money under the settlement may be applied in purchasing the freehold or seignory by way of enfranchisement, and by s. 18, money may be raised by mortgage for the purpose; see form of mortgage in Vol. II. As the tenant for life has, under s. 22 (2), the control of the reinvestment of capital money, B. is the proper person to enter into the contract for the purchase. As to enfranchisement.

or held or enjoyed with the premes, free from incumbces, & freed & enfranchised from all customary & other fines, heriots, paymts & manorial rts & services whatsr.

Provons as to title, & other special condons as in an agrmt for sale (*a*).

Completion.

2. The sd pchase or conson-moy shl be pd, & the sd sale or enfranchisemt shl be completed on the —— day of —— next at the office of Messrs. —— at ——, & on paymt thof the sd A. & all other necy pties, if any, shl exte a pper assurce of the premes to the uses or upon the trusts of the sd settlemt with pper statutory covts by the sd B. for title & further assurce, qualified in the mner usual in the case of tenants for life (*b*) to be prepared by & at the expse of the sd B. or his sd trees.

Provon for paymt of intt in case of delay in complon.

Retention of deeds, &c.

3. The munimts of title to the sd manor will be retained by the sd A., who shl, if required by the sd B., give to him or his sd trees a pper statutory acknmt for prodon & furnishg copies & undertakg for safe custody thof, & of the Ct Rolls of the sd manor (*c*) to be prepared by & at the expse of the sd B. or his trees.

Other condons as on an ordinary sale may be inserted so far as applicable, see Precedent I. In wits, &c.

MISCELLANEOUS CLAUSES *in* Agreements *for* Sale.

As to title and misdescription.

1. The vendor's title havg been already examined & approved by the pchaser, is accepted by him witht further

(*a*) The provisions of the V. & P. Act, 1874, ss. 1 and 2, and of the Conv. Act, 1881, ss. 3 (3, 6) and 4, would apply to this case; see above, pp. 252 *et seq.*

(*b*) See p. 264.

(*c*) See *Re Agg-Gardner*, 25 Ch. D. 600. As to the preservation of the Court Rolls, see the Copyhold Act, 1887, s. 48.

investigon, & the ppty havg been inspected by him, the description hinbfe contd is admitted by him to be correct as to quantity & all other mres wch are discoverable by inspon.

Part of purchase-money to be left on mortgage

II. The pchase-moy shl be pd by the pchaser to the vendor in mner follg, namely, the sum of £——, pt thof, with intt thron (in the event of the complon of the pchase being delayed), at the rate of —— p. c. p. a., from the time appted for complon until the actual complon, shl be pd upon the exon of the assurce of the premes; & the paymt of the remr thof, with intt at the rate of —— p. c. p. a., from the time appted for complon of the pchase, payable half-yrly, shl be secd by a mtge in fee of the sd premes, & by the [jt & sevl] covt of the pchaser [& X., as surety for him], to be prepared by the vendor at the expse of the pchaser, & to contain such powers & provons, & be in such form as the vendor shl reasbly require, & to be exted immedly after the exon of the assurce of the premes: [And the messe & bldgs upon the premes shl forthwith be insured agst loss by fire by the pchaser, or, in case of default on his pt, by the vendor, at the expse of the pchaser, in the sum of £—— at the least, in an office to be approved of by the vendor].

Premises to be insured.

Purchase-money payable by instalments secured by mortgage or trust deed.

III. The pchase-moy, with intt thron or on the unpd pt thof at the rate of —— p.c. p.a. from the —— day of ——, shl be paid by —— eql half-yrly instalmts of ppal amtg to £—— each, payable on the —— day of —— & the —— day of —— in each yr, the first to be pd on the sd —— day of ——, with the addon to each instalmt of the intt on the portion of the pchase-moy remaing unpd, but if the pchaser shl make default in paymt of any of such instalmts of ppal or intt or any pt thof for 30 days after the same shl have become due, the whole of the unpd instalmts of the sd pchase-moy, with the intt thron, shl become immedly due & payable, [& the paymt of the unpd instalmts & intt shl be secd, *by mtge, &c., as in last form, or,* "The pchase shl be completed on the —— day of ——, on wch day or as soon thrafter as may be, on paymt of the portion of the pchase-

moy wch shl have become payable, with the intt due up to that time, the vendor will exte a pper assurce of the premes to trees, one to be nominated by the vendor & the other by the pchaser, upon usual trusts, by sale or mtge or orwise, for securg the due paymt of the instalmts of pchase-moy remaing unpd, with intt as afsd, & subjt thto in trust for the pchaser, such assurce to be prepared by the solor of the vendor at the expse of the pchaser, & to contain all such trusts, powers, & provons as in case of dispute the counsel of the vendor shl advise."]

Consideration an annuity for vendor's life secured by mortgage, &c. (*a*).

IV. THE conson for the sd sale shl be an anny, or yrly sum of £——, durg the life of the vendor, commencg from the —— day of ——, & payable to him by eql qtrly paymts, clear of all dedons except income-tax, the first paymt to be made on the —— day of —— next, in case the vendor shl be then livg, & the paymt of such anny shl be secd, *by mtge, &c., as in form* II., *or*, "by the pchase of an anny of like amt from the Governmt or the —— Co for the life of the vendor, wch shl be accepted as sufft, witht any lien or chge upon the sd hereds & premes, or any other secy."

Diminution or increase in value.

V. THIS contract shl not be vacated or affected by any loss or damage to the sd premes by fire (*b*), tempest, or orwise, or any diminon or increase in the value thof from any cause whatever (other than the wilful neglect or default of the vendor) wch may take place at any time betn the date hrof & the complon of the pchase.

Special provisions on sale of business as going concern, the purchaser taking on himself the debts and liabilities.

VI. THE whole of the ppty, with the goodwill of the business, is sold as a going concern, the pchaser takg upon himself the debts & liabilities of the vendor in pt paymt of the pchase-moy, as hinafter mentd. The furniture, fittgs, & fixtures in the shop & warehouse in —— Street, & the stk of manufactured articles at the factory, & in the shop & warehouse, shl be taken & pd for by the pchaser at a valuon.

(*a*) It seems that this would not create a liability to succession duty on the vendor's death, see per Lord Westbury, C., *Floyer* v. *Bankes*, 3 De G. J. & S. 306, 312, better reported 33 L. J. Ch. 1.

(*b*) As to fire insurances, see p. 295, note.

The sale shl include the book & other debts owing to the vendor, & the benefit of all orders & contracts remaing unexted at the time fixed for the complon of the sale, wch shl resply in like mner be pd for by the pchaser at a valuon (due allowce being made for bad & doubtful debts). The amt of the debts owing by, & other liabilities of the vendor as they may exist at the time fixed for complon (such amt in case of diffce to be ascertained by valuon), shl be allowed in redon of the pchase-moy. The pchaser shl take upon himself, & indemnify & secure the vendor agst such contracts, debts & liabilities (the parlars thof being specified in a list or schdle), both by his psonal covt, & by a mtge & deposit of the title-deeds of the ppty sold, with pper powers, includg power in case of default to take posson & sell the ppty (exclusive of chattels psonal within the Bills of Sale Acts) such mtge & indemnity to be prepared by & at the expse of the vendor.

Purchaser to be let into possession before completion (*c*).

VII. THE pchaser shl be at liberty at any time to enter into posson of such pt of the premes as is in hand, but such entry shl not be deemed to be an acceptce by him of the title, or a waiver of any objon or requon wch he may then, or, but for such entry, might thrafter have made in respt of the title or orwise. *Add other provons wch may be applicable as at p.* 374, *clause* 3, *& see clause in brackets at the end of the next form.*

Avoiding contract if title not approved, with provision where purchaser has taken possession.

VIII. IF the counsel of the pchaser shl be of opinion that a good title cannot be made to the whole of the premes, & the defect of title is not such as is hinbfe made the subjt of compenson, the pchaser shl not be bound to complete the pchase as to any pt to wch a good title can be made, but the contract shl at his option be wholly void, & the vendor shl thrupon repay to the pchaser the deposit, togr with all expses pd or sustained by him in the investigon of the title or orwise in

(*c*) As to the procedure as to the payment of the purchase-money and otherwise, where the purchaser has been let into possession before completion, see *Greenwood* v. *Turner*, [1891] 2 Ch. 144.

respt of the sd intd sale, but witht any intt up to the avoidce of the contract or other compenson. And the premes shl in such case be a secy to the pchaser for the repaymt of all such moys, with intt thron, at the rate of 5 p.c. p.a. from the time of the avoidce of the contract. [And in case the pchaser shl have entd into posson or rect of the rents of the premes, or any pt thof, he shl immedly on the avoidce of the contract, or as soon thrafter as the moneys due to him, as last afsd, shl have been duly pd & satisfied, give up posson of the premes to the vendor, & shl acct to him for the net rents & profits (if any) reced by him, after deductg outgoings; but the pchaser, in case he shl have taken actual posson of the premes, shl not be liable to pay an occupon rent, or be entled to any allowce on acct of outgoings or orwise in respt thof.]

Avoiding contract if title not approved, giving purchaser compensation or option to take title.

IX. If the vendor shl fail to deduce a good title to the whole of the sd premes accdg to this agrmt, & the defect of title is not such as is hinbfe made the subjt of compenson, the pchaser shl not be bound to complete the pchase as to any pt to wch a good title can be made, but shl be entled at his option eir to accept such title as the vendor may be able to make, or by notice in writg to the vendor to annul the contract, & thrupon to recover from the vendor all expses pd or sustained by the pchaser in the investigon of the title, or orwise in respt of the sd intd sale, togr with the further sum of £——, as liquidated & ascertained damages for the breach of the contract on the pt of the vendor, & not as a penalty.

Time essence of contract on default of vendor.

X. If the vendor shl not deliver an abstract of his title to the pchaser, or his solor, at or bfe the expiron of one calr month from the date hrof, or shl not deduce a good & marketable title to the premes to the satisfon of the counsel of the pchaser bfe the expiron of —— calr months from the date hrof, then & in eir of the sd cases this contract shl be wholly void [shl be voidable at the option of the pchaser, provd that such option be decld in writg to the vendor within 1 calr month after the expiron of such last-mentd time], it being the intention of the pties hto that in such

case time shl be of the essce of this contract, & the jurisdon of any ct to enforce the same wholly barred. And the vendor shl thrupon repay to the pchaser the sd deposit of £——, &c., *see clause* VIII., *above*.

Time essence of contract on default of either party.

XI. If the pchase shl not be in all respts completed on the sd —— day of ——, then this contract shl, as agst the pty through whose neglect or default such non-complon shl have happened, be voidable at the option of the other pty, provd that such option be decld in writg to the pty in default within 1 calr month after the sd —— day of ——, it being the intention of the pties hto that in such case time shl be of the essce of this contract, & the jurisdon of any ct to enforce the same wholly barred. And in such case all expses pd or sustained by the pty not in default in the dedon or investigon of the title or orwise in relon to the premes shl be repd to him on demand by the pty in default.

Liquidated damages on default of either party (*a*).

XII. And for the due pformce of the sevl stipulons & agrmts hinbfe contd on the pt of the vendor & pchaser resply, each of them the sd pties doth hby bind himself unto the other of them in the sum of £——, to be considered as liquidated & ascertained damages, & not as a penalty.

Reservation to vendor of right of pre-emption in a certain event.

XIII. In case the premes hby agrd to be sold shl at any time hrafter durg the lives & life of the vendor & the pchaser, & the chn now livg of the vendor, & the survors & survor of such psons, or within 21 yrs after the death of such survor (*b*), cease to be used for the pposes for wch the same were sold as afsd, the rt or option of pre-emption or repchase thof, at a valuon to be made by two indifferent psons, one to be chosen by each pty, or their umpire, or in case of default by eir pty to nominate a valuer within 21 days after being required in writg so to do by the other pty, then by the valuer nominated by such last named pty alone,

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(*a*) Such a clause as this is of very doubtful utility; see above, p. 248, note.

Right of pre-emption.

(*b*) As to the necessity for this restriction of the right of pre-emption, see *London & South-Western Rail. Co.* v. *Gomm*, 20 Ch. D. 562. It might be better to substitute the lives of the royal family, as at p. 467.

shl be reserved & secd to the vendor, his hrs & assns, the owner or owners of the —— este, or (in the event of such este havg become severed or divided in ownership) the larger pt in value of such este, in mner follg (that is to say), the pchasers, their hrs or assns, shl forthwith, or as soon as may be after the premes shl cease to be used as afsd, make to the pson or psons last afsd an offer in writg of the rt or option of repchasg the premes at such valuon as afsd, wch offer shl be open for acceptce for 6 calr months from the time of the same being made (not being later than the expiron of such 21 yrs as afsd), & the pchasers, their hrs or assns, shl not be at liberty to sell, let, or orwise dispose of or deal with the premes or any pt thof, for any ppose save as afsd, unless such pson or psons shl decline such offer, or shl neglect or fail to accept the same within such time, but in the event of such offer being so declined or not accepted, the pchasers, their hrs or assns, shl thenceforth be at liberty to sell, let, or orwise dispose of or deal with the premes for such pposes as they may think fit, free from the restrons contd in this clause, but subjt nevs to the restrons & stipulons next hinafter contd, wch are to be at all times h[illegible]er bindg on the pchasers, their hrs & assns (that is to say), That no act or thing shl at any time hrafter be done in or upon the premes or any pt thof, wch shl or may be or grow to the annoyce, nuisce, or damage of the vendor, his hrs or assns, or his or their lessees or tenants, or any of them, or wch may be calculated to depreciate or lessen the value of the afsd este of the vendor or any pt thof as residential ppty.

Restrictive provisions as to user of premises (*a*).

Reservation to vendor of rights of altering buildings and right to lights (*b*).

XIV. The vendor reserves to himself, his hrs & assns, & his & their lessees, full liberty to alter or rebuild at any time hrafter any of the houses or bldgs on the south or west side of the premes hby agrd to be sold, & eir on the site of the

(*a*) For other restrictive provisions of this nature, see Conditions of Sale, pp. 318 *et seq.*

(*b*) Compare the form in Conditions of Sale, p. 327, and see note thereto.

existg bldgs or on any other pt of the ground held with the same resply, & with all such windows & opengs for light & air, & in such mner in all respts as he or they may think fit, witht any consent whatever on the pt of the pchasers, their hrs or assns, being required to any such alteron or rebldg, or any rt on their pt to object thto or claim compenson, on the ground of any interference with the access of light & air to the premes hby agrd to be sold or orwise, & no windows or lights now existg, or wch may hrafter be placed in any such houses or bldgs, or the access of light or air thto, shl at any time hrafter be in any mner stopped, obstructed, or interfered with by the pchasers, their hrs or assns, or their lessees or tenants.

Costs of agreement.

XV. THE costs of & incidental to the preparon & exon of this agrmt in duplicate shl be borne & pd by the vendor & pchaser eqlly.

Vendors' costs to be paid by purchaser (*c*).

XVI. ALL the costs, chges, & expses incurred by the vendors of & relatg to the preparg, engrossg, & executg this agrmt, & the preparg & fair copyg the abstract, & deducg & verifyg the title, & the perusg, approval, & exon of the assurce & any other deeds or orwise in relon to the psnt sale, shl be borne & pd by the pchaser, who shl also pay the chges of the surveyor employed by the vendors to survey & report upon the ppty, *or*, "the pchaser shl on complon pay the chges of the vendors' solors accdg to scale & the pper chges of the vendors' surveyor in relon to the sale."

Incorporation of common conditions of sale of a provincial law society (*d*).

XVII. THIS agrmt shl be deemed to incorporate the common form condons of the —— Law Society (a copy whof is hrunto annexed), so far as the same are applicable to a sale by private contract, but so that in case of any variance or inconsistency the provons of this agrmt shl prevail.

(*c*) See another form, throwing all costs on the purchaser, in Precedent V., at p. 358.

(*d*) For a form of agreement for sale by private contract, referring to conditions of sale by auction, see p. 268.

CONVEYANCES ON SALE.

RECITALS (*a*).

ASSURANCES, &c.

Conveyance of freeholds by grant (general in form).

1. WHAS by an indre, dated, &c., & expd to be made betn, *ties*, the hereds hby assured (*b*) [togr with other hereds] were grted to the use of, &c.

As to recitals.

(*a*) See 1 Dav. Prec., pp. 44 *et seq.*; Elph. Introd. Conv. 81. For other forms of recitals specially adapted to mortgages and settlements, see those headings. In framing recitals the possibility of their hereafter becoming useful as evidence in support of the title should often be considered; see as to this the V. & P. Act, 1874, s. 2; *Bolton* v. *London School Board*, 7 Ch. D. 766 (a strong decision); *Re Marsh*, 24 Ch. D. 11. As to estoppel by recital see *Clarke* v. *Hall*, 24 L. R. (Ir.) 316; Elph. N. & C., Interp. Deeds, p. 140 *et seq.* The practice of making deeds supplemental to prior deeds so as to save recitals (as in the case of endorsed deeds), has of late come considerably into use in some cases, mainly in consequence of the Conv. Act, 1881, s. 53; see *infra*, DEEDS.

Mode of reference to subject-matter of conveyance.

(*b*) The word "assured" is used here and elsewhere instead of "grted," &c., as being of general import, and applicable to any conveyance, whether by grant, assignment, appointment, bargain and sale, or otherwise. The short form "hby assured," is for the most part used instead of "hinafter expd to be hby assured," or "hinafter desed & intd to be hby assured;" but the latter forms are often used in practice. Where several sets of parcels derived under different titles are to be conveyed by the same deed, but by different modes, *e.g.*, one by grant and another by appointment, it may be convenient to use the distinctive words "grtd," "appted," or as the case may be, instead of "assured;" if they are all conveyed together, they may be described

II. WHAS by an indre, dated, &c., & expd, &c., [after recitg (among other things) that, *or*, "to the effect that," *or*, "after recitals whby it appeared that," &c., it is by the indre now in recital witsd that] in conson of the sum of £—— pd by the sd B. to the sd A., *or*, "for the conson thrin mentd," the sd A. grted unto the sd B., his hrs & assns, the hds hby assured [togr with other hds] to hold the same unto & to the use of the sd B., his hrs & assns. The same (particular in form). Variation for sub-recitals.

III. WHAS by an indre, dated, &c. & expd to be made, &c., the hds hby assured were assured to such uses & in such mner as the sd B. shd by deed appt, & in default of such apptmt to the use of the sd B. & his assns durg his life, with remr to the use of the sd C. & his hrs [*or*, exs & ads] durg the life of the sd B., in trust for the sd B. & his assns, with remr to the use of the sd B., his hrs & assns. Conveyance to uses to bar dower (general in form) (c).

IV. WHAS by an indre of rele, dated, &c., grounded on a lease for a yr, & expd to be made betn, &c., & by a fine levied by the sd —— to the sd —— in or as of —— term in the —— yr of the reign of His Majesty, &c., & by a Lease and release, and fine, or recovery (general in form).

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in the parcels as, "First all that, &c., & Secondly all that, &c." and referred to as, "the hds first [*or*, secondly] hinafter descd & intd to be hby assured."

By means of the provision in the Conv. Act, 1881, s. 49, that the word "grt" is not necessary in a conveyance of hereditaments (which however is merely a declaration of the previous law), and by the use of the word "convey" in the forms in the third and fourth schedules to the Act, coupled with section 57 (declaring that those forms shall be "sufficient"), the latter word has acquired an appropriateness as a term of art which it did not previously possess; and it may properly be used, if preferred, instead of "grt" or "assn" in a conveyance of any kind of property; but the fact that the word "convey" is used in the Act, with the aid of the interpretation clause (s. 2), in a still larger sense, so as to apply even to an appointment, or a lease, or a covenant to surrender, is not of course a reason for extending the use of the word in deeds in that manner. As to use of word "convey"

(c) This and the next five forms of recital of old modes of conveyance, though still occurring frequently in abstracts, can now rarely be wanted in practice; but their retention seems desirable.

declon of the uses of the sd fine contd in the sd indre of rele, [*or*, by a common recovery duly suffered in psuance of the same indre of rele in the Ct of Common Pleas in —— term in the sd yr] the hds hby assured were assured to the use of, &c.

Lease and release, and appointment.

v. Whas by an indre of apptmt & rele, dated, &c., grounded so far as the same operated as a rele on a lease for a yr, & expd to be made, &c., *if the recital is parlar in form*, "the sd A. appted that the hds hby assured shd thenceforth go & remain to the uses thinafter decld concerng the same, & by the indre now in recital the sd A. reled unto the sd B. & his hrs the sd hds & premes, to hold the same unto the sd B. & his hrs, to the use, &c.," *if genl in form*, "the hds hby assured were assured to the use, &c."

Lease and release, and assignment.

vi. Whas by an indre of rele & assnmt, dated, &c., grounded so far as the same operated as a rele on a lease for a yr, & expd to be made, &c., the hds hby grted were assured to the use, &c., & the hds hby assned, were assned, &c.

Statutory release.

vii. Whas by an indre of statutory rele, dated, &c., & expd, &c., the hds, &c., were assured, &c.

Bargain and sale enrolled.

viii. Whas by an indre of bargain & sale duly enrolled psuant to the statute in that behalf, dated, &c., & made &c.

Covenant to surrender copyholds.

ix. Whas by an indre, dated, &c., & expd to be made, &c., for the conson thrin mentd, the sd A. covted with the sd B. to surrender the hds hinafter covted to be surrendered to the use of, &c.

Surrender of copyholds.

x. Whas [at a ct holden for the manor of —— in the coy of ——], on the —— day of ——, the hds hinafter covted to be surrendered were [psuant to the afsd covt in that behalf] surrendered by the sd A. [out of ct] into the hands of the lord of the sd manor of ——, to the use of the sd B., his hrs & assns, at the will of the lord, accdg to the custom of the sd manor of ——.

Admittance to copyholds.

xi. Whas [at a ct holden for the manor of —— in the coy of ——], on the —— day of ——, the sd A. was [out of ct] admitted tenant to the hds hinafter covted to be surren-

dered to hold at the will of the lord, accdg to the custom of the sd manor of ——.

Surrender and admittance (short form).

XII. WHAS the sd copyhd premes were on the —— day of —— duly surrendered to the use of the sd A., his hrs & assns [psuant to the afsd covt in that behalf], & the sd A. was on the same day duly admitted thto.

General recital of any assurance.

XIII. WHAS under or by virtue of an indre, dated, &c., *or as the case may be*, the hds hby, &c., were assured to or became vested in the sd A. for an este of inhance in fee simple.

Mortgage in fee of freeholds.

XIV. WHAS by an indre, dated, &c., & expd, &c., in conson of the sum of £—— pd by the sd B. to the sd A., [the sd A. covted with the sd B. for paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt for the same at the rate thrin mentd, on the —— day of —— then next, & in case of default in paymt thof for paymt to him or them thrafter of intt thron half-yrly as thrin expd (*d*). And by the same indre] the hds hby assured were [togr with other hds] conveyed & assured by the sd A. unto & to the use of the sd B., his hrs & assns, subjt to a provo for the redmon thof upon paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt for the same at the rate & on the day thrin mentd, *or*, "as afsd," [*or*, by way of mtge for securg the paymt to the sd B., his exs, ads, or assns of the sum of £——, with intt for the same, as thrin expd]: [And it was thby provd, &c., *add, if need be, recital of power of sale or other clauses wch are material.*]

Mortgage of leaseholds by demise or assignment to two mortgagees.

XV. WHAS by an indre, dated, &c., & expd, &c., in conson, &c. [*recite covt for paymt if material, as in last form*], the premes comprd in the hinbfe recited indre of lease were demised [assned] by the sd A. unto the sd B. & C., their exs, ads, & assns, for the residue of the sd term of —— yrs grted by the sd lease [except the last day thof] subjt to a provo for the redmon thof on paymt to the sd B. & C.,

(*d*) In a conveyance on sale it is not usually necessary to recite the covenant for payment, or anything more than the conveyance subject to redemption.

or the survor of them, or the exs or ads of such survor, their or his assns, of the sum of £—— with intt, &c. [*or*, by way of mtge for securg, &c., *see last form*]: [And the sd A. thby decld himself a tree of the nominal reversion thby reserved of the same premes for the sd mtgees subjt to such equity as might for the time being be subsistg by virtue of the provo for redmon thinbfe contd]: [And it was thby provd, &c., *recite any other clauses, as the power of sale, or, in a mtge to sevl, the jt acct clause, if material*].

Mortgage of copyholds.

XVI. WHAS by an indre, &c., in conson, &c., [*recite covt for paymt, if material, as in form* XIV.] the hds hinafter covted to be surrendered were covted to be surrendered by the sd A. to the use of the sd B., his hrs & assns, subjt to a condon for makg void the same surrender on paymt to the sd B., his exs, ads, or assns, of the sum of £—— with intt for the same in the meantime at the rate, & on the day thrin mentd, [*or*, by way of mtge for securg, &c., *as above, form* XIV.]: [And it was thby provd, &c., *see last form*].

Conditional surrender of copyholds by way of mortgage.

XVII. WHAS on the —— day of ——, in conson, &c., the hds hinafter covted to be surrendered, *or*, "the sd copyhd hds," were duly surrendered by the sd A. to the use of the sd B., his hrs & assns, subjt to a condon, *as in last form*, *or*, "subjt to a condon for makg void such surrender psuant to the hinbfe recited indre of mtge."

Mortgage of freeholds, copyholds, and leaseholds.

XVIII. WHAS by an indre, dated, &c., [*recite covt for paymt if material, see form* XIV.]: the freehd hds hby assured [togr with other freehd hds], were assured by the sd A. unto & to the use of the sd B. (*a*), his hrs & assns, & the premes comprd in the (*b*) hinbfe recited indre of lease, were assned [demised] by the sd A. unto the sd B., his exs, ads, & assns, for the residue of the sd term of yrs grted by the sd lease [except the last day thof], subjt as to all the sd

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(*a*) For a mortgage to several, say, here and subsequently, "B. C. & D., their, &c."

(*b*) For several leases, say, "respive hinbfe recited indres of lease," and subsequently, "respive terms of yrs," and so on.

freehd & leasehd premes to a provo for the redmon thof on paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt thron at the rate, & on the day thrin mentd: [And it was thby agrd that the sd A. shd thenceforth stand possed of the nominal revon thby reserved of the sd term of yrs in the sd leasehd premes, in trust for the sd B., his exs, ads, & assns, subjt to such equity of redmon as afsd:] And by the same indre, the sd A. covted with the sd B., his exs, ads, & assns, to surrender the copyhd hds hinafter covted to be surrendered [togr with other copyhd hds] to the use of the sd B., his hrs & assns, accdg to the custom of the manor of ——, in the coy of ——, subjt to a condon for makg void the same surrender correspondg with the provo for redmon thinbfe contd as afsd: [And it was thby provd, &c., *recite any other clauses, such as the power of sale, or jt acct clause in a mtge to sevl, wch may be material.*]

The same (shorter form).

XIX. WHAS by an indre dated, &c., & expd, &c., the freehd hds hby assured, were [togr with other hds] assured by the sd A. to the use of the sd B., his hrs & assns, & by the same indre, the leasehd hds hby assured were assned [demised] by the sd A. to the sd B., his exs, ads, & assns, for the residue of the term for wch the same are held, [except the last day thof, & the sd A. thby decld himself a tree for the sd B. of the nominal revon thby reserved of the sd leasehd premes as afsd,] & the copyhd hds hby covted to be surrendered were covted to be surrendered by the sd A. to the use of the sd B., his hrs & assns, by way of mtge for securg the paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt thron at the rate, & on the day thrin mentd.

Statutory mortgage of freeholds or leaseholds (c).

XX. WHAS by an indre of statutory mtge dated, &c., & expd, &c., the hds hby assured were assured by the sd A. to the use of the sd B. in fee simple, [to the sd B., his exs, ads, & assns, for the residue of the sd term of —— yrs, [except the last day thof]] for securg paymt to the sd B. of the

(c) See the Conv. Act, 1881, s. 26, and 3rd schedule.

ppal sum of £——, with intt thron at the rate, & on the day thrin stated.

Mortgage of personalty.

XXI. WHAS by an indre, &c., the —— share, & all other, if any, the share & intt to wch the sd A. was entled in revon or expectcy under the sd will of the sd X. or orwise, of & in his residy este, or the trust funds & ppty representg the same, *or as the case may be*, were [togr with other ppty], assned by the sd A. to the sd B., his exs, ads, & assns, by way of mtge, for securg the sum of £—— & intt.

Further charge.

XXII. WHAS by an indre, &c., in conson of, &c., the sd A. chged the sd hds comprd in the sd indre of mtge of the —— day of —— with the paymt to the sd B., his exs, ads, or assns, of the further sum of £——with intt for the same as thrin mentd.

Transfer of mortgage of freeholds and leaseholds.

XXIII. WHAS by an indre, &c. [after recitals whby it appeared that there was then due from the sd A. to the sd B. the ppal sum of £—— upon the secy of the sd mtge [& further chge], with some intt, it is by the indre now in recital witned that] in conson, &c., the sd B. [at the reqt of the sd A., *mtgor*] assned the sd sum of £—— & the intt due & to become due for the same, unto the sd C., his exs, ads, & assns, & by the same indre the sd B. [at the like reqt of the sd A.] grted [& the sd A. confirmed] the sd hds & premes comprd in the sd indre of mtge, with the appurts, unto & to the use of the sd C., his hrs & assns, subjt to such eqty of redmon as the same premes were then subjt to by virtue of the sd indre of mtge [& further chge]. *Similar recital, mutatis mutandis, of assnmt of leasehds.*

The same (short form).

XXIV. WHAS by an indre, &c., the sum of £——, being the ppal sum then owing as thrin recited under the sd mtge of, &c., & the intt due & to become due for the same, & the sd respive freehd & leasehd hds & premes comprd in the sd mtge were resply assned, assured, & transferred by the sd B. [with the concurrce of the sd A., *mtgor*], to the sd C., subjt as to the sd hds to the eqty of redmon subsistg thrin.

Statutory transfer of mortgage (*a*).

XXV. WHAS by an indre of statutory transfer of mtge,

(*a*) See the Conv. Act, 1881, ss. 26–28, and 3rd schedule.

dated, &c., & expd, &c., the sd A. conveyed & transferred to the sd B. the benefit of the sd mtge.

Statutory transfer and mortgage combined (*b*).

XXVI. WHAS by an indre of statutory transfer of mtge & statutory mtge, dated, &c., & expd, &c., after recitals whby it appeared, &c., in conson of, &c., the sd A. conveyed & transferred to the sd C. the benefit of the sd mtge, & by the same indre the sd A., accdg to his este & by diron of the sd B., conveyed, & the sd B. conveyed & confirmed the hds hby assured to the use of the sd C. in fee simple [to the sd C., his exs, ads, & assns, for the residue of the sd term of —— yrs] for securg paymt of the sum of £——, with intt thron as thrin mentd.

Devolution of title to mortgage (short).

XXVII. WHAS by virtue of divers mesne assurces, acts in the law, & events, & ultimately by an indre dated, &c., & expd, &c., the ppal sum owing on the secy of the sd indre of mtge with the intt thron has become vested in the sd A., & the hds & premes comprd in the sd indre of mtge [except certn pts thof wch were in the yr —— sold & conveyed to the pchaser] have become vested in the sd A., subjt to the eqty of redmon subsistg thrin on paymt of the sd mtge debt & intt: AND WHAS there is now due on the secy of the sd mtge the ppal sum of £——, with the sum of £—— for intt thron.

Settlement of real estate with power of sale.

XXVIII. WHAS by an indre, &c. [*describg the wife as*, "B.," then & thrin descd by her then name of "K.," being a settlemt made in conson of the marre then intd & shortly aftwds solemnised of the sd A. & B.] certn freehd estes & hds, wch comprd the hds hby assured, were limd & settled [after solemnison of the sd marre, & subjt to a power of apptmt wch was never exercised & has now ceased, & to certn estes & chges wch have since ceased or become satisfied] to the use of the sd A. for his life witht impeachmt of waste, & after his dece, & after sevl limons wch have since determined or become incapable of takg effect, to the use of the sd C., in tail male, with divers remrs over, *or*, "to certn uses by virtue whof the sd A. is now tenant for life in posson thof": And

(*b*) See the Conv. Act, 1881, ss. 26-28, and 3rd schedule.

it was thby provd, &c., *recite material pts of power of sale at length, or,* "And in the same indre is contd a power of sale of the sd hds, wch is now vested in the sd K. & L., as the psnt trees of the sd settlemt, & is exercisable with the consent of the sd A. as tenant for life thrunder."

Settlement or will, in conveyance under Settled Land Acts.

XXIX. WHAS by an indre of settlemt, &c., *or,* "the will dated, &c., & proved, &c., of X. deced," the hds hby assured (togr with other hds) were conveyed [devised] & settled to the use, &c., *set out limons down to & includg the limon to A., the vendor,* with remrs over, & the sd settlemt [will] contains a power of sale of the sd hds & premes exercisable by the sd B. & C., *trees,* or the survors or survor of them, with the consent, &c., *or if so,* "& the sd B. & C. were thby appted trees thof for the pposes of the Settled Land Acts, 1882 to 1890."

The same (short form).

XXX. WHAS under a settlemt, &c., *or,* "the will, &c.," the hds hby assured (with other hds) now stand limd & settled to uses under wch the sd A. is legal tenant for life in posson thof, *or,* "are now vested in the sd B. & C. upon trusts under wch the sd A. is beneficially entled to the posson or rect of the rents & profits thof," & the sd B. & C. are the trees of the sd settlemt [will] for the pposes of the Settled Land Acts, 1882 to 1890.

Appointment of trustees by the Court under Settled Land Acts.

XXXI. AND WHAS the sd indre of settlemt [will] contains no power of sale of the sd hds & premes thby settled exercisable by or with the consent or approval of the trees thof, & no trees were thby appted for the pposes of the Settled Land Acts, 1882 to 1890, *or,* "AND WHAS at the date of the order next hinafter recited, there were not any trees of the sd settlemt [will] for the pposes of the Settled Land Acts, 1882 to 1890:" AND WHAS by an order of the Chancery Divon made by Mr. Justice —— on the —— day of ——, on the applon of the sd A. & the sd B. & C. were appted & they are now the trees of the sd indre of settlemt [will] for the pposes of the sd Acts.

Conveyance of freeholds in trust for sale.

XXXII. WHAS by an indre, &c. [exted in conson of the marre then intd & shortly aftwds solemnised of the sd A. &

B.] certn hds situate in the coy of, &c., wch comprise the hds hby assured, were assured unto & to the use of the sd K. & L., their hrs & assns, upon trust [after the sd intd marre], &c., *recite material pts of the trust for sale at length, or,* "upon trust for sale with the consent of the sd A. & B., or the survor of them, durg their, his, or her life [& aftwds at the discron of the trees or tree for the time being of the same indre]."

The same, where land purchased under power in personalty settlement.

XXXIII. WHAS by an indre, &c., *the convce,* the hereds hby assured were conveyed to the use of the sd B. & C., their hrs & assns, upon the trusts by an indre of settlemt of, &c., *or,* "the will, &c.," decld concerng the hereds to be pchased under a power thrin contd, being (amongst other trusts) for the sale of the sd hds by the sd trees with the consent of, &c.

Settlement or will in deed conveying land to the uses thereof (short).

XXXIV. WHAS under an indre of settlemt, &c., *or,* "the will dated, &c., & proved, with a codl, on, &c., in the —— Registry," [& subseqt deeds, & ultimately under an indre of settlemt, &c.], divers hds in the coy of ——, wch are commonly known as the —— este, stand limd & settled to uses under wch the sd A., pty hto, is tenant for life in posson thof, & the sd B. & C. are the trees of powers of sale & other powers contd in the sd settlemt, *or,* "will" [& resettlemt], & as such trees have in their hands moys arisg from sales or other dealgs wch are liable to be applied in the pchase of hds to be conveyed to the uses afsd.

Lease.

XXXV. WHAS by an indre of lease, dated, &c., & expd, &c., *pcels in full, from lease* (*a*), with the appurts thof were

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Parcels in recital of lease.

(*a*) For brevity the parcels may be described as "the messe, land, & hds, *or as the case may be,* thrin parlarly descd, situate, &c., & wch are now known as, &c." If the lease contains reservations, add after the parcels, "subjt to the reservons or exceptions thrin contd." In an assignment of part only of the premises in the lease, the parcels assigned will be set out in the operative part, and the parcels will be described in the recital of the lease as "the [pce of land, messe, &] hds, hinafter parlarly descd & intd to be hby assned (togr with other hds); and the amount of the rent should be stated.

demised [by the sd A.] to the sd B., his exs, ads, & assns, from the —— day of ——, for the term of —— yrs, subjt to the paymt of the rent thby reserved, & the covts on the pt of the lessee & condons thrin contd.

Mining lease (short).

XXXVI. WHAS by an indre, &c., all those mines, seams, measures, or strata of coal, known as ——, & also all those mines, beds, or strata of ironstone known as ——, lying & being under all those lands, &c., togr with such liberties, licences, & authorities for workg or gettg the sd mines & minls or incidental thto, as are in the sd indre expd, subjt to such reservons & exceptions as are thrin mentd, were demised & grted [by the sd A.] to the sd B., his exs, ads, & assns, for the term of —— yrs from the —— day of ——, subjt to the paymt or renderg of the surface & other rents & royalties thby reserved & made payable, & the covts on the pt of the lessee & condons thrin contd.

Several leases referring to schedule.

XXXVII. WHAS by the four sevl indres of lease, the dates & pties whof are stated in the 1st & 2nd columns of the schdle hto, the sevl messes or tenemts & hds wch are shortly descd in the 3rd column of such schdle, were demised to the sd B., his exs, ads, & assns, for the respive terms & at the respive yrly rents mentd in the 4th & 5th columns thof, & subjt to the covts on the pt of the lessee & condons in such respive leases contd.

Assignment of lease.

XXXVIII. WHAS by an indre, &c., the premes comprd in the sd indre of lease with the appurts thof were assned by the sd A. to the sd B., his exs, ads, & assns, for the residue of the sd term of —— yrs grted by the sd lease, subjt to the rent reserved by & covts on the pt of the lessee & condons contd in the sd lease. [*For* 2 *or more leases say*, WHAS by an indre, &c., the premes comprd in the sd respive indres of lease with the appurts thof were assned by the sd A. to the sd B., his exs, ads, & assns, for the respive residues of the sevl terms of —— yrs & —— yrs, *or as the case may be*, grted by the sd leases resply, subjt to the rents reserved by & covts on the pt of the lessee & condons contd in the sd respive leases.]

Variation for two or more leases.

Assignment of part of leaseholds at an apportioned rent.

XXXIX. WHAS by an indre, &c., the sd K. [who was then entld to the premes demised by the sd lease for the residue then unexpired of the sd term of —— yrs] assned unto the sd A. the hds hby assned, being pt of the hds demised by the sd lease, to hold the same unto the sd A., his exs, ads, & assns, for the residue of the sd term of —— yrs, subjt to the yrly rent of £——, being an apportioned pt of the sd rent of £—— reserved by the sd lease, & to the covts by the lessee & condons thenceforth to be pformed & observed in respt of the premes thby assned, & by the same indre the paymt by the sd K. & A. resply & their respive exs, ads, & assns of their respive portions of the sd rent of £——, & the pformce & observce by them resply of the covts & condons of the sd lease in respt of the premes vested in them, & their mutual indemnity in respt thof were secd by mutual covts in that behalf thby entered into by the sd K. & A. resply & by mutual powers of distress & entry thby grted by them upon their respive portions of the premes.

Devolution of title to lease.

XL. WHAS by virtue of divers mesne assurces, acts in the law, & events, & ultimately by an indre, dated, &c., & expd, &c., the premes comprd in the sd indre of lease have become absolutely vested in the sd A. for all the residue of the sd term of —— yrs, subjt to the rent reserved by & covts & condons contd in the sd lease. [*For* 2 *or more leases say,* WHAS by virtue of, &c., the premes comprd in the sd sevl indres of lease have become absolutely vested in the sd A. for all the residue of the sd terms of —— yrs & —— yrs, *or as the case may be,* subjt to the rents reserved by & covts & condons contd in the sd leases resply.]

Variation for two or more leases.

Deed acknowledged or enrolled under Fines, &c., Act.

XLI. WHAS by an indre, dated, &c., & expd to be made, &c., & wch was duly acknowed by ——, *or,* "enrolled," psuant to the statute in that behalf.

Will containing

XLII. WHAS X., late of, &c., deced, by his will, dated, &c., after certn specific devises & other disposons not affectg the hds hby assured [covted to be surrendered], gave & devised the residue of his freehd & copyhd estes & hds unto,

general devise (*a*). Variation for trust for sale. &c. [unto & to the use of the sd A. & B., their hrs & assns, upon trust, &c., *recite trust for sale, as far as material, at length, or,* " upon trust for sale & with power to give rects for the pchase-moy in mner thrin mentd "] : *Death of testor & probate, see* p. 402 : AND WHAS the sd testor was, at the time of his dece, seised in fee simple of the freehd hds hby assured [seised of the copyhd hds covted to be surrendered for an este of inhance accdg to the customs of the respive manors of wch the same are held].

Seisin of testator.

Specific devise. XLIII. WHAS X., late of, &c., deced, duly made his will, dated, &c., & thby gave & devised the hds hby assured, with the appurts thof [by the description of, &c.] unto, &c. *Death & probate, see* p. 402.

Will devising freeholds subject to annuities and a term. XLIV. WHAS A., late of, &c., deced, duly made his will, dated, &c., & thby gave & devised the hds hby assured (subjt to certn annies or rent-chges thby limd or devised to L. & M. resply & their respive assns durg their respive lives, with the usual powers & remedies for recoverg paymt thof when in arrear, & to a term of —— yrs, commencg from the sd testor's dece, thby limd to trees upon certn trusts for, &c.) to the use of, &c.

Codicil. XLV. AND whas the sd testor by a codl to his sd will, dated, &c., after recitg, &c., gave & devised, &c.

Deed poll. XLVI. WHAS by a deed-poll, dated, &c., under the hand

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As to wills before the Wills Act. (*a*) In the case of a will before the Wills Act, 1 Vict. c. 26, which came into operation on 1st January, 1838, it is usual to say, " WHAS A., &c., by his will, dated, &c., & duly attested in mner then required for devisg real este, &c. ; " and the recital of the seisin should state that the testator " was at the date of his will & thenceforth until his dece, seised, &c."

As to wills of real estate. The fact that probate is not necessary to complete the title of a devisee of real estate is sometimes treated as a reason for not reciting it in that case ; but where powers over the real estate are given to the executors, it is obviously proper to insert the recital. And in any case, as the probate affords strong *primâ facie* evidence of the validity of the will, the recital supplies useful information, and should be inserted. As to the grant of probate of wills dealing with real estate only, see *Re Hornbuckle*, 15 P. D. 149.

& seal of the sd A., &c. [*if by a Co*, "under the common seal of the sd Co & the hands of 3 of the dirors thof, &c."].

XLVII. WHAS by a bond or obligon, dated, &c., under the hand & seal of the sd A., the sd A. became bound to the sd B., in the sum of £—— with a condon for makg void the same upon paymt, &c., *or*, "conditioned for the paymt, &c.," *or*, "with a condon thrunder written whby after recitg, &c., it was provd, that upon paymt, &c., the sd bond shd be void." Bond. Variation where recitals are recited.

XLVIII. WHAS by an indre dated, &c., endorsed on [supplemental to] the hinbfe recited indre of settlemt, & expd, &c., [in exercise of a power for that ppose contd in the sd indre of settlemt,] the sd A. & B. resply were duly appted by the sd X. to be trees of the same indre in the place of the sd L. deced, & of the sd M. who retired from the treeship thof, & by the indre now in recital, or orwise, the trust este & premes wch were then subjt to the trusts of the sd settlemt were duly assured or transferred so as to vest in the sd A. & B. jtly with the sd C. [*or*, it was thby decld by the sd X. that the trust este & premes, &c., shd vest, &c.]. Appointment of new trustees.

XLIX. WHAS by an indre bearg even date with, & exted bfe, *or*, "already prepared & engrossed & intd to bear even date with & to be exted immedly after," *or*, "bearg date the day next bfe the day of the date of," these psnts, & expd to be made betn, *pties*, *or*, "the same pties as these psnts," the sd hds & premes have been, *or*, "are intd to be," conveyed, &c. Deed of even date or dated the day before.

L. WHAS by the award, dated, &c., of the Commrs appted under an Act of Parliamt of the —— & —— yrs of her psnt Majesty, c. —, intituled, &c., (& wch award was duly confirmed by the Inclosure Commrs for England & Wales (*b*) on the —— day ——), the pces of land, allotmts, & hds hinafter covted to be surrendered, were (togr with other hds) allotted & awarded to the sd A. for or in respt of [or in exchange for] the sd copyhd hds comprd in the hinbfe recited surrender of, &c. [or certn pts thof]. Award of Inclosure Commissioners.

LI. WHAS by an award of the Copyhd Commrs (*b*), dated, Award of enfranchisement.

(*b*) If since the Settled Land Act, 1882, (see s. 48), say, "the Land Commrs for England;" or if since the Act 52 & 53 Vict. c. 30, "the Board of Agriculture."

&c. [after recitg that the enfranchisemt of the sd hds had been duly required accdg to the provons of the Copyhd Acts, & that A., the lord of the sd manor, had consented in writg to the enfranchisemt extendg to the rts reserved by the Copyhd Act, 1852, sec. 48, & that the amt to be pd for such enfranchisemt had been ascertained under the provons of the Copyhd Acts to be the sum of £——, & that such sum had been duly pd under the diron of the sd Commrs, & that all other acts required by the sd Acts previously to the confirmon of the award now in recital had been duly done & pformed:] The sd Commrs, in psuance of the powers vested in them by the Copyhd Acts, enfranchised the sd hds with their appurts, [& did also, by virtue of the consent afsd, enfranchise the same from all the rts reserved by the Copyhd Act, 1852, sec. 48:] To be holden as freehd thenceforth dischged from all incidents of copyhd or customary tenure.

Private Act of Parliament.

LII. WHAS by a private Act of Parliamt made & passed in the —— yr of the reign of her psnt Majesty (chapter ——), intituled, &c., after recitg (among other things) that, &c., it was enacted, &c.

TITLE.

Seisin in fee in possession or reversion.

I. WHAS [under the will of X., late of, &c., deced, dated, &c., *or*, "under an indre dated, &c., & made, &c.,"] the sd A. is seised of the hds hby assured in fee simple in posson, *or*, "in revon expectant on the dece of B., of, &c.," free from incumbces [except a lease, &c.].

Married woman's seisin as separate estate (*a*).

II. WHAS the sd A., who intermarried with the sd B. on the —— day of ——, is seised of the hds hby assured in fee simple in posson free from incumbces as her separate ppty, independently of the sd B. [under an indre, &c., *or*, "the will of, &c."].

(*a*) See the Married Women's Property Act, 1882, ss. 1, 2, 5.

III. WHAS the sd A., & B. his wife, in rt of the sd B., are seised, &c. Married woman's seisin. Old law.

IV. WHAS the sd A. is seised of the copyhd hds hinafter covted to be surrendered for an este of inhance to him & his hrs, accdg to the custom of the manor of ——, in the coy of ——, of wch the same are held. Title to copyholds.

V. WHAS the sd A. is seised in fee simple of such portions of the hds hinafter descd as are of freehd tenure (& wch portions comprise or are believed to comprise —— acres or thrabts, but are intermixed with or orwise undistinguishable from the copyhd or customary portions thof hinafter mentd, or are alleged so to be), & is seised of the other portions of the same premes wch are of copyhd or customary tenure (& wch comprise or are believed to comprise —— acres or thrabts), for an este of inhance, &c. Seisin of freeholds and copyholds intermixed (*b*)

VI. WHAS [under, &c., *as in form* I.], the sd A. is seised or entled in fee simple in posson of or to, *or*, "has an absolute power of apptmt over," the hds hby assured, subjt to two sevl annies or rent-chges of £—— & £—— by the will, dated, &c., of L., deced, bequed to the sd B. & C. resply durg their respive lives, & wch were by the sd last-mentd will chged on the premes hinbfe mentd, togr with other hds, with usual powers & remedies for recoverg paymt thof, *or*, "subjt to a mtge in fee simple of the same premes (togr with other hds), for securg £—— & intt, created by an indre, dated, &c., & expd to be made, &c., & wch mtge was by an indre, dated, &c., & expd to be made, &c., transferred to & is now vested in the sd, &c." Title subject to rent-charges or mortgage.

VII. WHAS the sd A. is seised or entled in fee simple in posson of or to the hds hby assured, subjt [to the sevl annies & rent-chges specified in the first column of the first schdle hto, wch were created or chged thron by the respive instrumts mentd in the second column of the sd schdle, & are payable to the sevl psons mentd in the third The same by reference to schedule.

(*b*) As to freeholds and copyholds being intermixed, in case of enfranchisement, see Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 42.

column of the sd schdle, & subjt also] to the sevl mtge debts or sums mentd in the first column of the second schdle hto, & the intt thron resply, wch respive debts or sums & intt are sevlly secd by the respive indres mentd in the second column of the sd second schdle, & are now vested in the sevl psons mentd in the third column of the sd second schdle: And whas [all the sd annies & rent-chges have been pd, &] the intt on all the sd mtge debts or sums has been pd up to the date of these psnts.

Title for life, with remainder in tail or fee.

viii. Whas under, &c., *see form* i., the sd A. is seised or entled as tenant for life in posson witht impeachmt of waste of or to the hds hby assured, with remr to the sd B. in tail male, *or*, "in fee simple" [subjt to the incumbces specified in the first schdle hto, wch affect the inhance of the sd este, & to the incumbces specified in the second schdle hto, wch affect the life este of the sd A.].

The same. Another form.

ix. Whas under, &c., the hds hby assured now stand limd & settled [subjt, &c.,] to the use of the sd A. for his life [with remr to trees durg his life upon trust to preserve contingent remrs], with remr in the events wch have happened to the sd B. in tail male, with divers remrs over, *or*, "in fee simple."

Freeholds under settlement, and other instruments.

x. Whas under or by virtue of an indre, dated, &c., & expd, &c., & by virtue of other assurces, instrumts, or means subseqt thto, divers messes, lands, tithes, & hds situate or arisg in the parishes of —— in the coy of ——, & commonly known as the —— este, stand limd & settled to the use of, &c.

Copyholds in settlement.

xi. Whas under, &c., the copyhd hds hby, &c., wch are held of the manor of ——, & the legal este whof is vested in trees or a tree, stand settled upon trust for the sd A. for his life, with remr upon trust for the first & other sons of the sd A. successively in tail genl, with divers remrs over.

Title as co-parceners or co-heirs in gavelkind.

xii. Whas the sd A. & B., as the only chn & co-heiresses-at-law, *or*, "the only sons & co-hrs accdg to the custom of gavelkind," of C., late of, &c., deced, are seised of the hds hby, &c., in fee simple in posson free from incumbces as co-parceners, *or*, as tenants in common.

XIII. WHAS the sd A. & B. are seised of the hds hby, &c., in fee simple in posson free from incumbces as jt tenants, *or*, "as tenants in common in eql shares," *or*, "in the shares & proportns follg, namely, the sd A. is entled to one eql undivided fourth share thof, & the sd B. to the remaing three-fourth shares thof." Title as joint tenants, or tenants in common.

XIV. WHAS, under the will of K., of, &c., dated, &c., & proved, &c., the sd A. is entled to one eql —— share of & in the sum of £—— £2 15*s.* p.c. Consold. Stk., now standg in the names of, &c., subjt to the life intt of B., of, &c., thrin [& subjt to the contingency of, &c.]. Title to stock.

XV. WHAS under or by virtue of the will or testy apptmt of B., deced, late the wife of C., deced, bearg date, &c., & proved, &c., & made in psuance of a power of apptmt contd in the will of D., deced, dated, &c., & proved, &c., the sd A. is entled to a legacy or sum of £——, payable (subjt to duty) upon the dece of X., out of certn trust funds & secs in the sd will or testy apptmt of the sd B. mentd or refd to, & wch now consist of the sum of £——, &c., stk, & £—— secd on mtge, resply standg in the names of or vested in E. & F. as trees under the will of the sd D. Title to reversionary legacy or interest in personalty under will of married woman.

XVI. WHAS the sd A. is entled to a policy of assurce effected on his own life & in his own name for the sum of £—— with the —— Assurce Socy, dated, &c., & nod. ——, under the annl prem of £——, *or*, "to the poly [sevl pols] of assurce on his own life, hinafter," *or*, "in the schdle hto" mentd & intd to be hby assned" [subjt to the chges or incumbces thron hinafter mentd]. Title to policy or policies of assurance (*a*).

XVII. WHAS the sd A. is entled to certn engines, fixed & movable machy, plant, utensils, furniture, materials for manufacture, manufactured goods, stk-in-trade, & other chattels & effects used in, or belonging to his sd business & trade [wch are specified in the 1st schdle hto], & is also Title to trade plant, book debts, contracts, &c.

(*a*) It is generally more convenient to give the particulars of the policies in the operative part; and it saves trouble in preparing the notices of the assignment to be given to the offices.

entled to certn book debts [the parlars whof are contd in the 2nd schdle hto, *or*, " in the books of acct of his sd business "], & has also entd into or obtained, & is entled to the benefit of divers contracts & orders [wch are specified in the 3rd schdle hto] for the supply of articles & things manufactured by him, or orwise relatg to his sd business.

Miscellaneous.

Recital making the conveyance supplemental to a prior instrument (*a*).

I. Whas these psnts are supplemental to an indre dated, &c., & expd, &c., being a convce of the —— este to the sd A. in fee simple, *or*, " a mtge of the —— este to the sd A. for securg the sum of £—— & intt," *or*, " a settlemt of the —— este under wch the sd A. is now entled as tenant for life to the hds hby assured " (hinafter called the " convce," *or as the case may be*).

The same.

II. Whas these psnts are supplemental to the sevl indres & deeds poll the parlars & nature whof, togr with the names or descriptions by wch the same resply are hinafter refd to, are specified in the schdle hto (*b*).

Where there are several prior deeds.

Death of testator, and probate of will.

III. Whas the sd testor died on the —— day of —— witht havg revoked or altered his sd will, wch was duly proved by the sd exs thrin named [except the sd K.] on the —— day of ——, in the Prerogative Ct of the Archbishop of Canterbury, *or*, *other ecclesiastical ct*, *or*, " in the Ppal [the —— district] Registry of the Ct of Probate," *or*, " in the Ppal [the —— district] Registry of the Probate Divon " [the sd K. havg renounced probate thof, *or*, " power being

Variation where one executor does not prove (*c*).

(*a*) See the Conv. Act, 1881, s. 53, and above, p. 77, note.

(*b*) The schedule may be divided into four columns, containing the dates of the instruments, the parties, a short statement of the nature of each deed, and the name or short title by which it is referred to.

Probate.

(*c*) The jurisdiction of the ecclesiastical courts as to probate and administration was abolished by the Act, 20 & 21 Vict. c. 77, creating the Court of Probate, which came into operation on the 11th January, 1858; and the latter Court was converted into the Probate Division of the High Court of Justice by the Judicature Act, 1873, which came into operation on the 1st November, 1875. For recitals of wills, see p. 395, *et seq.*

reserved to the sd K. to prove the same, but wch he has not done, & he has since renounced probate & disclaimed the trusts thof"].

IV. WHAS the sd testor died on the —— day of —— witht havg revoked or altered his sd will, save by a codl dated the —— day of ——, wch did not affect the disposons hinbfe recited, & the sd will & codl were duly proved, &c., *as in last form*. Death of testator, and probate of will and codicil, the codicil not being recited.

V. WHAS the sd testor died on the —— day of —— witht havg revoked or altered his sd will, save as afsd, & the sd will & codl, &c., *as in form* III. The same where the codicil is recited.

VI. WHAS the sd A. died on the —— day of —— domiciled in Scotland, witht havg revoked or altered his sd will: AND WHAS (*d*) the sd S. & T., as such exs nominate, have obtained confirmon of the sd will from the Commissary [sheriff (*e*)] of the Coy of —— in Scotland, & the same was duly recorded in the books of Council & Session on the —— day of ——: AND WHAS such confirmon has been pduced in the Ppal Registry of the Probate Divon of the High Ct of Justice in England, & a copy thof deposited with the Registrar [(*f*) togr with a certified copy of the interlocutor of the sd Commissary, findg that the sd A. died domiciled in Scotland], & such confirmon was sealed with the seal of the sd Probate Divon on the —— day of ——. Proof of will in Scotland, and confirmation in England.

VII. WHAS the sd A. died on the —— day of —— havg by his will, dated, &c., appted the sd X. exor thof, & the sd will was duly proved by the sd X. on the —— day of —— in the —— Ct, &c. Death, and appointment of executor.

VIII. WHAS the sd A. died on the —— day of —— intestate & leavg the sd B. his widow, & the sd C. his eldest son & hr-at-law [& customary hr accdg to the custom of the sd Death intestate, heirship, next-of-

(*d*) See 21 & 22 Vict. c. 56. That executors under a Scotch will can make a title to English leaseholds, see *Hood* v. *Barrington*, 6 Eq. 218.

(*e*) See 39 & 40 Vict. c. 70, s. 35, *et seq*.

(*f*) If the confirmation was on or after 1st October, 1876, the words in this bracket should be omitted, see 39 & 40 Vict. c. 70, s. 41.

kinship, and administration (*a*).

manor of ——] [the sd C. & D., his co-heiresses-at-law], & the sd B., C. & D. his statutory next of kin, & lres of admon of the psonal este & effects of the sd A. were on the —— day of —— grted by the —— Ct, *or as the case may be, see form* III., to the sd B.

Partial intestacy.

IX. WHAS the sd A. died on, &c., intestate as to the sd hds & premes, &c. [*or*, havg made a will, dated, &c., & a codl thto, dated, &c., but such will & codl did not in any mner affect or relate to the sd hds & premes, &c.].

State of family.

X. WHAS the sd A. died on, &c., leavg issue [havg had issue] by his sd marre 5 chn & no more, namely, B. & C., who attned their respive ages of 21 yrs on the —— day of ——-, & the —— day of —— resply, D. now the wife of L., with whom she intermarried on, &c., E. who died on the —— day of ——, under the age of 21 yrs, namely, at the age of —— yrs or thrabts & witht issue, *or*, "who died in early infancy," & F., now an infant of the age of —— yrs or thrabts.

Marriage.

XI. WHAS the sd A. in the month of, &c., intermarried with B., of, &c. [at the parish church of ——].

Bankruptcy under Act of 1849 or 1861.

XII. WHAS the sd A. was on the ——- day of —— adjudicated a bkpt [*where the bkptcy was under the Act of* 1849, *under wch the bkpt's este vested in the official and credors' assnees jtly, say*, "& B. was appted official assnee for such bkptcy"] by the Ct of Bkptcy at ——, & the sd C. & D. were on the —— day of —— chosen by the credors to be assnees of the este & effects of the sd A., & such choice was aftwds duly confirmed.

Bankruptcy under Act of 1869.

XIII. WHAS the sd A. was adjudicated a bkpt by an order of the London Ct of Bkptcy, dated, &c., upon a peton of bkptcy filed in such ct, & at a meetg of the credors on the —— day of —— the sd B. was duly appted tree of the ppty of the sd bkpt, & such apptmt was duly certified by a certfe under the seal of the sd ct, dated, &c.

(*a*) As to the devolution of intestates estates, see the Intestates Estates Act, 1890, 53 & 54 Vict. c. 29, *Re Twigg*, [1892] 1 Ch. 579.

Bankruptcy under Act of 1883.

XIV. WHAS by an order of the High Ct of Justice in Bkptcy [*or*, the Coy Ct of —— holden at —— in Bkptcy], dated, &c., the sd, *bkpt*, was duly adjudicated a bkpt, & on the —— day of —— the sd, *tree*, was duly appted tree of the este & effects of the sd, *bkpt*, & on the —— day of —— 18— the sd apptmt was duly certified by the Board of Trade.

Proceedings in insolvency before the Act of 1861.

XV. WHAS the sd A. on the —— day of —— took the benefit of the Acts then in force for the relief of insolvent debtors, & B. was appted the credors' assnee under such insolvency.

Liquidation by arrangement under Act of 1869.

XVI. WHAS by special resolon passed at a genl meetg of the credors of the sd A., on the —— day of —— psuant to the Bkptcy Act, 1869, & wch resolon was aftwds duly registered, it was resolved that the affairs of the sd A. shd be liquidated by arrangemt, & not in bkptcy, & the sd B. was appted tree witht a committee of inspon, & such apptmt was duly certified by a certfe of the Registrar of the London Bkptcy Ct [the Coy Ct of ——], dated, &c.

Voluntary winding-up of company (*b*).

XVII. WHAS a special resolon requirg the sd Co to be wound up voluntarily was passed at a genl meetg of the Co, held on the —— day of ——, & confirmed at a subseqt genl meetg, held on the —— day of ——, & by a resolon passed at such last mentd meetg the sd A. & B. were duly appted liquidators of the sd Co.

The same. Another form (*b*).

XVIII. WHAS by an extraordinary resolon duly passed at a genl meetg of the Co, held on the —— day of ——, accdg to the requiremts of the Cos Act, 1862, it was resolved that it had been proved to the satisfon of the Co that it could not, by reason of its liabilities, continue its business, & that it was advisable to wind up the same, & the sd A. was duly appted sole liquidator of the Co.

Voluntary winding-up to be con-

XIX. WHAS by an order of the Chancery Divon made by the Vice-Chancellor [Mr. Justice] —— on the —— day of

(*b*) See the Companies Act, 1862, ss. 129, 133.

tinued under supervision of Court (*a*).

——, on the hearg of a peton in the mre of the Cos Acts, 1862 to 1890, & of the —— Co, it was ordered that the voluntary windg up of the sd Co be continued under the supervision of the Ct, & that any pcdgs in the voluntary windg up might be adopted as the judge shd think fit.

Compulsory winding-up and appointment of official liquidator (*b*).

XX. WHAS by an order of, &c., *as in last form*, it was ordered that the sd Co shd be wound up by the Ct, under the provons of the Cos Acts, 1862 to 1890, & by an order of the sd Divon made by, &c., on the —— day of ——, the sd K. was duly appted official liquidator of the sd Co.

Decree in Chancery.

XXI. WHAS by a decree of the High Ct of Chancery, made by the Vice-Chancellor Sir ——, on the —— day of ——, in a cause whrin the sd A. was plt, & B. & others were defts (being a suit for the ppose of, &c.), an acct was directed to be taken, &c., & it was amongst other things ordered, &c.

Judgment of High Court of Justice.

XXII. WHAS by the judgmt of the Vice-Chancellor [Mr. Justice] —— in an action in the —— Divon of the High Ct of Justice, whrin A. was plt & B. & others defts (being an action for the ppose of, &c.), it was amongst other things ordered, &c.

Order on petition or summons.

XXIII. WHAS by an order of the High Ct of Chancery [Chancery Divon] made on, &c., by the Vice-Chancellor [Mr. Justice] ——, upon a peton presented, *or*, "upon an applicon by summons in chambers," in the sd cause & in the mre of, &c., by the sd A., it was ordered, &c.

Chief Clerk's certificate.

XXIV. WHAS by the certfe of the Chief Clerk made in the sd cause, dated, &c., & duly confirmed, it was certified, &c.

Alteration of parcels.

XXV. WHAS the sd hds have been considerably altered in regard to their subdivons & in other respts by the shiftg or removal of fences, ditches, or other boundary marks & the erection of a new mansion house & other bldgs since the date of the sd indre of, &c., in wch the ancient description thof is contd, & the same sevl hds accdg to their psnt

(*a*) See the Companies Act, 1862, ss. 147, *et seq.*
(*b*) See the Companies Act, 1862, s. 79, *et seq.*

subdivons, quantities & abuttals, are delineated & descd in the map or plan hrunto annexed & in the table of referce to the sd map or plan contd in the schdle hto.

Introductory, &c.

1. Whas the sd A. has agrd with the sd B. for the sale to him for the sum of £—— (*c*), of the hereds hby grted, *or*, "hby assured," in fee simple in posson, & also of the copyhd or customary hds hinafter covtd to be surrendered & the inhance thof in posson accdg to the custom of the manor of ——, free from incumbces [except as hinafter mentd]. Contract for sale of freeholds and copyholds, applicable to private contract or auction.

2. Whas the sd A. has agrd with the sd B. for the sale to him for the sum of £—— of the premes comprd in the hinbfe recited (*d*) indre of lease, for all the residue now to come of the term thby grted as afsd, subjt to the rent reserved by & the covts & condons contd in the sd lease. Contract for sale of leaseholds.

3. Whas by the diron of the sd A., the hds hby assured, togr with other hds, were, on the —— day of —— put up for sale by public auction at, &c. [accdg to certn printed parlars of sale, of wch parlars lots —— & —— comprd the sd hds intd to be hby assured], & at such sale the sd B. was the highest bidder for & was decld the pchaser of the same for the sum of £——, *or*, "of lot —— for the sum of £——, & of lot —— for the sum of £——." Sale by auction (*e*).

4. Whas the sd A. & B., as trees of the sd indre of, &c. [the sd will of the sd X.], & in exon of the sd power of Contract for sale by trustees.

(*c*) In case of a rent-charge say: "In conson of the perpetual rent-chge hinafter reserved & limd & of the covts & provons hinafter contd, & on the pt of the sd B., his hrs, exs, ads, & assns, to be pformed & observed." Variation for sale for a rent-charge.

(*d*) For several leases say, "sevl, *or*, 'respive,' hinbfe recited," &c., and make similar alterations throughout.

(*e*) This form is for use where it is necessary to refer to the auction. The forms for general use are Nos. 1. and 11.

[trust for] sale thrin contd, & with the consent (hby testified) of the sd C., have agrd, &c., *as in form* I. *or* II.

Contract for purchase by trustees (*a*).

V. WHAS the sd A. & B., as trees of an indre, &c., being a settlemt of certn estes situate, &c. [the will dated, &c., & proved, &c., of X. deced], & in the exon of a trust or power in the sd indre [will] contd for the investmt of moys arisg thrunder in the pchase of real or leasehd estes have, with the consent (hby testified) of the sd C., as tenant for life in posson under the sd settlemt [will], agrd with the sd D. for the pchase, &c.

Contract for sale where both parties are trustees.

VI. WHAS the sd A. & B., as trees of, &c., & in exon, &c., & with the consent of, &c., *as in form* IV., have agrd to sell, & the sd C. & D., as trees, &c., *as in the last form*, have agrd to pchase, &c., *as in form* I. *or* II.

Contract for sale by mortgagee under power, express or statutory.

VII. WHAS the sd A., in exercise of the power wch is vested in him under or by virtue of the sd indre of mtge [& the statute in that behalf] has agrd with the sd C. for the sale, &c.

Contract for sale by tenants in common.

VIII. WHAS the sevl psons, pties hto of the first —— pts, accdg to their sevl & respive shares, estes, intts, & powers, have resply agrd with the sd F. for the sale to him, for the sum of £——, of the entirety of the hds, &c.

Contract for sale under the Settled Land Acts.

IX. WHAS the sd A., as such tenant for life as afsd, actg under the powers of the Settled Land Acts, 1882 to 1890 (*b*), has agrd, &c.

Contract for sale where both parties

X. WHAS the sd A., by virtue of the powers vested in him by the sd Act, *or*, "the sd Act & the Acts incorpd thwith," *or*, "the Act passed in the Session of Parliamt held in the

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Variation where settlement recited.

(*a*) If the settlement has been previously recited (which is not usually necessary), recite, "WHAS the sd A. & B. as the psent trees of the sd indre of settlemt [will] & in psuance of the afsd power [trust] in that behalf, & at the reqt (hby testified) of the sd C., have agrd, &c."

(*b*) If the sale includes the principal mansion-house or land occupied with it, and is made with the consent of the trustees, add here, "with the consent (hby testified) of the sd, *trees*"; see the Act of 1890, s. 10.

—— & —— yrs of the reign of her Majesty, intituled, &c.," *or*, "the Act —— Vict. c. —," *or*, "the —— Act, 18—," has agrd to sell & the sd B. & C. by virtue of the powers vested in them by, &c, have agrd to pchase, &c. act under statutory authority.

XI. WHAS by a contract, dated, &c., & made, &c., the sd A. agrd with the sd B., subjt to the sanction of the High Ct of Justice being obtained, for the sale to him, &c.: AND WHAS by an order of the Chy Divon of the High Ct of Justice, made on the —— day of ——, in an action in wch —— was plt, & —— & others defts [in the mre of, &c.], the sd condonal contract was confirmed & ordered to be carried into effect, *or*, "the sd A. & his succors in title, was & were authorised to carry the same into effect." Contract for sale, subject to approval of Court, and order (*c*).

XII. WHAS by an order of the Chy Divon, made on, &c., the sd A. & his succors in title, was & were authorised to sell, &c. Order authorising sale of mansion-house, &c., under Settled Land Acts (*d*).

XIII. WHAS the sd A. lately contracted with the sd B. for the sale to him, for the sum of £——, of the hds hby assured, but no convce thof has yet been exted to the sd B.: AND WHAS the sd B. has agrd with the sd C. to transfer to him the benefit of the sd contract upon the terms of the sd C. paying to him, the sd B., the sum of £——, makg with the sd sum of £——, agrd to be pd by the sd B. for the pchase of the premes as afsd, the sum of £——. Contract for sale, and sub-contract.

XIV. WHAS upon the treaty for the sd pchase it was agrd that the sum of £——, pt of the sd pchase-moy, shd be secd to the sd A., with intt for the same at the rate of, &c., by a mtge of the sd pchased premes. Part of purchase-money to remain on mortgage.

XV. WHAS it has been agrd that the sd pchase-moy of £—— shl be payable as follows, that is to say, £—— upon the exon of these psnts, & the residue thof by four annl instalmts of £—— each on the —— day of ——, &c., with Agreement for payment of purchase-money by instalments.

(*c*) This may be used for a sale in an action, or of a mansion-house, or land occupied with it, under the Settled Land Acts, unless an order giving general authority to sell is obtained before the contract is entered into, as in the next form.

(*d*) See the rules under the Act of 1882, Form VI.

intt on the ppal sum for the time being unpd at the rate of —— p.c. p.a., to commce from the date of these psnts, & to be payable annlly with the instalmts of ppal.

Valuation of timber (*a*).

XVI. WHAS by the sd parlars of sale it was stipulated that all timber & other trees of the value of £—— shd be taken by the pchaser at a valuon to be made as thrin mentd, & the timber & trees on the premes comprd in lot —— have accdly been valued at £——.

Agreement for apportionment of rent payable by tenant.

XVII. WHAS upon the treaty for the sd pchase, it was agrd that the yrly sum of £—— shd be the apportioned pt of the sd yrly rent of £—— payable in respt of the hds hby assured, but that the consent of the tenant to such apportionmt shd not be required.

State of mortgage debt.

XVIII. WHAS the sd sum of £—— remains owing to the sd A. on the secy of the sd indre of, &c. [indres of mtge & further chge], but all intt thron has been pd up to the date of these psnts, *or*, "WHAS there is now owing to the sd A. on the secy of, &c., the ppal sum of £——, with the sum of £—— for intt thron, makg togr £——."

Agreement as to concurrence of mortgagee.

XIX. WHAS it has been agrd that the sd sum of £——, *mtge debt & intt*, shl be pd to the sd B., *mtgee*, out of the sd pchase-moy, & that he shl join in these psnts in mner hinafter appearg [*or*, "that the sd pchase moy shl be pd to the sd B. in pt dischge of the sd mtge debt so due to him as afsd"; *or*, "that the sum of £——, pt of the sd pchase-moy, shl be pd to the sd B. in pt dischge, &c."; *or*, "the sd B. havg other sufft secy for the ppal moys & intt owing to him on the secy of the sd indre of mtge [indres of mtge & further chge] of, &c., it has been agrd that the whole of the sd pchase-moy shl be pd to the sd A., *mtgor*, & that the sd B. shl join, &c."].

Various cases.

Payment in discharge of stock mortgage (*b*).

XX. WHAS the sum of £——, pt of the sd pchase-moy of £——, being the sum required at the current market rate to pchase the sum of £—— £2 15*s.* p.c. Consold Stk, has

(*a*) The price of the timber would usually be added to the purchase-money without the need for this recital.

(*b*) See National Debt (Conversion) Act, 1888, s. 21; *ante*, p. 78, note.

been pd by the sd, *pchaser*, to the sd, *mtgees*, & has been invested by them in the pchase of that sum in their names in satisfon of their sd mtge debt.

Agreement of party to concur.

XXI. WHAS the sd B. has agrd to join in these psnts for the ppose, &c. [*or*, for the pposes & in mner hinafter appearg].

As to form of conveyance.

XXII. WHAS the sd A. is desirous that the sd pchased premes shl be conveyed to the uses & in mner hinafter expd.

The same.

XXIII. WHAS it has been agrd that [the sd pchased premes shl be assured & limd in the mner, & subjt to the rts & restrons hinafter set forth, & that] these psnts shl contain the sevl covts & stipulons hinafter expd.

Purchase by tenant for life for benefit of trust estate.

XXIV. WHAS the sd, *life tenant*, being desirous that the sd hds so agrd to be pchased by him as afsd shl be added to & held with the hds comprd in the hinbfe recited indre of settlement, has agrd to pay the sum of £—— out of his own pper moys to make up the pchase-moy for the same witht reservg or havg any claim or demand for reimbursemt of such sum or any pt thof or any equity in his favour by reason of such paymt, & is desirous that the sd hds shl be conveyed to the uses & in mner hinafter appearg.

Apportionment of purchase-money between copyholds and other property for stamp duty (*c*).

XXV. WHAS for the ppose of the Act of Parliamt imposg ad valorem stamp duties upon convces on sale, it has been agrd that the sum of £——, pt of the sd pchase-moy, shl be the price or conson for the sd freehd [& leasehd] hds, & that the sum of £——, the residue thof, shl be the price or conson for the sd copyhd or customary hds.

Introductory to acknowledgment for production of deeds (*d*).

XXVI. WHAS the sevl [deeds &] documts specified in the schdle hto, wch are in the posson of the sd A., relate as well to the hds hby assured [*or*, assured by the hinbfe recited indre] as to other hds of the sd A., & it has been agrd that the sd A. shl retain the sd deeds & documts, & give such acknmt [& undertakg] in relon thto as is hinafter contd.

The same,

(*c*) See the Stamp Act, 1891, ss. 58, 61.

(*d*) See the Conv. Act, 1881, s. 9. This recital is now usually omitted.

for several sets of deeds.

sevl schdles hto relate as well to the hds hby assured [*or*, assured by the hinbfe recited indre] as to other hds, & it has been agrd that the deeds & documts specified in the first schdle hto shl be retained by the sd A., that the deeds & documts specified in the second schdle hto shl be retained by the sd B. & C., & that the deeds & documts specified in the third schdle hto shl be retained by the sd D., & that such respive pties shl give such acknowemts [& (as regards the sd A. & D.) such undertakgs] in relon thto as are hinafter contd.

CONSIDERATION—RECEIPT (*a*).

One vendor and one purchaser.

1. In conson of the sum of £—— now (*b*) pd by the sd, *pchaser*, to the sd, *vendor*, [*if the convce be witht recitals add*,

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Receipt for consideration.

(*a*) The Conv. Act, 1881, provides (s. 54) that the receipt for the consideration in the body of a deed shall be sufficient, without any further receipt being endorsed: and by s. 55, a receipt, whether in the body of the deed or endorsed, is to be sufficient evidence of the payment in favour of a subsequent purchaser or other person dealing for value without notice, although the consideration was not in fact paid (as to the previous law, see *Bickerton* v. *Walker*, 31 Ch. D. 151). There is therefore now no object in endorsing a receipt, except where, as in the case of some companies or public bodies, it is the practice to endorse a receipt signed by some official or agent.

Payment to solicitor.

The same Act, s. 56, provides that the production by a solicitor of a deed containing a receipt, in the body or endorsed, executed by the person entitled to give a receipt for the consideration, shall be a sufficient authority for the payment thereof to the solicitor. (See as to this *Day* v. *Woolwich, &c., Society*, 40 Ch. D. 491; and as to the previous law, see *Viney* v. *Chaplin*, 4 Dr. 237; 2 De G. & J. 468; *Ex parte Swinbanks*, 11 Ch. D. 525.) This will in ordinary cases save trouble by superseding the necessity for a special authority for such payment; but as the statutory authority is given to the solicitor who produces the deed, although not the solicitor of the party to whom the consideration is payable, it may be productive of inconvenience in some cases, *e.g.*, where mortgagees acting by separate solicitors are to be paid off out of the

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(*b*) Or, if preferred, "this day," or "upon or bfe the exon of these psnts."

"for the pchase of the fee simple in posson of the hds hby assured," *or* "for the pchase of the inhance in posson of the hds hby covted to be surrendered," *or*, "for the pchase of the hds hby assnd,"] (the rect whof the sd, *vendor*, doth hby acknowe).

Several vendors and several purchasers.

II. In conson of the sum of £—— now pd by the sd, *pchasers*, to the sd, *vendors*, in the proportions & mner follg,

purchase-money. Where the purchasers are trustees, they would be protected in respect of the payment by the 66th section of the Act.

Where vendors trustees.

It was decided that the enactment in s. 56 did not apply where the vendors were trustees, as it did not abrogate or alter the rule that trustees cannot in general authorise payment of the trust money to an agent; *Re Bellamy*, 24 Ch. D. 387; and it has also been decided (contrary to a *dictum* in *Webb* v. *Ledsam*, 1 K. & J. 385), that trustees cannot in general authorise payment to one of themselves (*Re Flower*, 27 Ch. D. 592); the result being that it was necessary that the trustees should all be personally present to receive the money, or that payment should be made to their joint account at a bank; but this, being very inconvenient in practice, has been altered by the Trustee Act, 1888, 51 & 52 Vict. c. 59, s. 2, which extends s. 56 of the Conv. Act, 1881, to trustees, although it does not empower them to delegate the receipt of the purchase-money to an agent except in that particular mode. The doctrine of *Re Bellamy* did not of course apply to mortgagees, nor doubtless to executors (who in this and other respects are not subject to the same strict rules as trustees); the new Act, however, expressly extends to executors and administrators; see s. 1. It would seem from the principle of *Re Bellamy*, that payment to the solicitor would not be good under the Conv. Act, 1881, s. 56, where the conveyance is executed by the vendor by attorney, who has no power to appoint substitutes.

Where it is desired to exclude the statutory authority, a notice countermanding it should be sent to the solicitor of the purchaser or other party by whom the money is payable. The following is a form of express authority for payment to the solicitor:—

Authority by vendors for payment of purchase-money or deposit to solicitors.

"To C. & D., *pchasers*.

Sale of ppty in——.

We hby authorise & reqt you to pay to our solor, X., of, &c., the amt of the deposit [pchase-moy] payable by you to us on the exon of the agrmt for [complon of] the sale of the above mentd ppty. Dated, &c.

Signed $\left\{ \begin{matrix} \text{A.} \\ \text{B.} \end{matrix} \right\}$ *vendors*."

namely, £—— to the sd A., &c. (*c*) (the rect whof [of wch respive sums] they, the sd, *vendors*, do resply hby acknowe).

Where vendors are a company or corporation.

III. In conson of the sum of £—— now pd by the sd, *pchaser*, to the sd, *Co or corporon*, *or*, "to the acct of the sd, *Co or corporon*, at the —— Bank" (the rect whof the sd, *Co or corporon*, do hby acknowe, *or*, "the rect whof is intd to be acknowed by a memdum endorsed on these psnts signed by, *some officer or agent*, & the paymt whof the sd, *Co or corporon*, do hby also acknowe").

On sale by mortgagor and mortgagees, part of purchase-money being paid to the latter.

IV. In conson of the sum of £—— now pd by the sd, *pchaser*, at the reqt of the sd, *mtgor*, in mner follg, namely, the sum of £——, pt thof, to the sd, *mtgees*, in full [pt] dischge of the moys owing to them under their sd mtge secy as afsd (the rect whof the sd, *mtgees*, do hby acknowe), & the sum of £——, the residue thof, to the sd, *mtgor* (the rect & paymt in mner afsd of wch respive sums, makg togr the sd pchase-moy of £——, the sd, *mtgor*, doth hby acknowe).

Release of a debt owing to purchaser.

V. In conson of the sum of —— so owing by the sd, *vendor*, to the sd, *pchaser*, as afsd, from the paymt whof & from all claims & demands in respt whof the sd, *pchaser*, doth hby rele the sd, *vendor*, his hrs, exs, & ads, & in conson of the further sum of £—— now pd by the sd, *pchaser*, to the sd, *vendor* (the rect of wch sum of £——, makg with the sd sum of £—— the sd pchase-moy of £——, the sd, *vendor*, doth hby acknowe).

Transfer of stock to vendor or mortgagee.

VI. In conson of the sum of £—— havg immedly bfe the exon of these psnts been applied by the sd, *pchaser*, in the pchase in the name of the sd, *vendor* [*mtgee*], of the sum of £—— £2 15*s.* p.c. Consold Stk (the pchase in mner afsd of wch sd sum of stk, the sd, *vendor* [*mtgee*], doth hby acknowe).

Money paid into Court.

VII. In conson of the sd sum of £—— havg been pd into Ct as hinbfe is recited (the paymt whof is hby acknowed).

Rent-charge.

VIII. In conson of the rentchge hinafter limd & secd to

(*c*) If the vendors are all absolute beneficial owners the purchase-money may be expressed to be paid to them jointly on their joint receipt without any apportionment; see Lewin, 476, 669.

the sd, *vendor*, & of the covts by the sd, *pchaser*, hinafter contd.

IX. In conson of the respive paymts & mres hinbfe recited & of the premes [& of the covts by the sd, *pchaser*, hinafter contd, & for the other consons hrin appearg]. Consideration appearing from recitals or other parts of deed.

PARCELS (*a*).

Real Estate.

I. All that pce of land contg [by estimon, *or*, "admeasuremt," *or*, "accdg to a recent admeasuremt"] —— acres, —— roods, & —— perches or thrabts, situate in the parish of —— in the coy of ——, & bounded on or towards the north by land now or late of A., on or towards the south by the high road from —— to ——, on or towards the west, &c., and also all that other pce of land contg, &c., situate, &c., & bounded, &c., togr with the messe or tenemt & outbldgs erected or standg on the sd last mentd pce of land, all wch premes were lately in the tenure or occupon of ——, his undertenants or assns, & are now in the tenure or occupon of, &c. [*for copyhds add*, to wch premes the sd A. was admitted tenant out of ct, *or*, "at a ct held for the sd manor," on the —— day of —— on the surrender of X., *or*, "as the hr of Y. deced"]. Land and houses. Copyholds.

II. All that messe or tenemt, yard, garden, & outbldgs, & all those pces of meadow or pasture land adjoing thto & held thwith, situate, &c., & contg, &c., & now known as The same. Another form.

(*a*) See 1 Dav. Prec. p. 61, *et seq.*, 275, *et seq.*; Elp. Introd. Conv., 69, 93, 328. See other forms under the heads, Leases (Houses, &c.), Leases (Mining), Settlements (Personal), and Settlements (Real).

—— [*boundaries as in form* I. ; *or reference to plan, see form* XII., *& tenancies*].

House in town (*a*)

III. ALL THAT messe or tenemt with the yard, garden, coach-house, stable, offices & outbldgs thrunto belonging, situate & being No. —— on the west side of —— street, *or*, "known as, &c., situate in the —— road," in the parish of ——, in the coy of ——, & contg in width frontg, &c., —— ft, & at the back or rear thof —— ft, & in depth on the west side thof —— ft, & on the east side thof —— ft, be the same sevl dimensions little more or less, & abuttg towards the west, &c., &c. [*add reference if need be to plan, see form* XII., *the dimensions & abuttals being in that case given on the plan, & tenancies*].

Newly-erected houses.

IV. ALL THOSE pces or plots of lands situate, &c. [& lately formg pt of certn fields or closes of lands known as, &c.], & all those —— messes or dwg-houses, shops, & outbldgs erected or now in course of eron on the sd respive pces or plots of land & known as or intd to be called Nos. —, —, & —, in —— street [*add reference to plan if thought necy, see form* XII.].

Several pieces of land.

V. ALL THOSE pces of land & hds, situate, &c., contg in the whole, &c., or thrabts, & with the respive quantities & boundaries thof hinafter more parlarly mentd (that is to say), first a pce of land called, &c., contg, &c., & bounded, &c., secondly, &c., &c., be the sd respive quantities little more or less [or howsr orwise the sd respive lands & premes may be called, known or bounded], wch premes were formerly in the tenure or occupon of, &c., & are now in the occupon of ——.

Farm.

VI. ALL THAT messe or farm-house with the outbldgs & the sevl closes or pces of land known as the —— farm, situate in the parish of —— & coy of ——, & comprisg in the whole —— acres, &c., or thrabts [*add parlars as in last form, or by reference to schdle & plan, & tenancy*].

A small irregular

VII. ALL THAT pce of land situate, &c., the boundary

(*a*) As to the description where the vendor owns two buildings, one partly overhanging the other, see *Laybourn* v. *Gridley*, [1892] 2 Ch. 53.

line whof startg from the north corner thof runs towards the south-east next the —— road —— ft, & then breaks north-eastward —— ft, & from thence runs south-eastward —— ft, & then returns towards the south-west —— ft, & then runs towards the north-west in a curved line adjoing the pce of land next hinafter mentd —— ft, & then towards the north-east back to the startg point next, &c., —— ft., *add tenancy.* piece of land, with measurements in feet.

VIII. ALL THOSE the manors or lordships or reputed manors or lordships of, &c. Manors (*b*).

IX. ALL THAT mansion-house with the park, gardens, bldgs, lands, & hds occupied or held thwith, known as the —— este, contg, &c. [*reference to schdle & map, see form* XII.]. Mansion-house and estate.

X. ALL THAT land covered with water, situate, &c., called or known as —— lake, & estimated to comprise —— acres, or thrabts, & in the tenure or occupon of, &c. Lake.

XI. ALL THOSE pces of land, &c., &c., togr with half the bed or soil of the river —— where the same adjoins the sd respive pces of land, & the rt of fishg in the sd river, & all rts incident to the ownership of such half of the bed of the sd river, & all such other rts in or over the sd river, & the bed, soil, & water thof, as the sd, *vendor*, is entled to as owner of the lands hby conveyed. Land adjoining river (*c*).

XII. ALL THAT, &c., situate, &c., wch premes are more parlarly descd in the schdle (*d*) hrunder written & [with the respive boundaries, *or*, "abuttals," thof] are for greater clearness delineated or shown on the map or plan (*e*) Reference to schedule and plan.

(*b*) See p. 290, note (*b*).

(*c*) As to the presumption that half the bed of a river or half the soil of a highway passes under a grant of adjoining land, and how it may be rebutted, see *Micklethwait* v. *Newlay Bridge Co.*, 33 Ch. D. 133; *Duke of Devonshire* v. *Pattinson*, 20 Q. B. D. 263; Elph. Interp. Deeds, 179 *et seq.* Rivers and highways.

(*d*) The schedule of parcels may be divided into columns containing, 1. the numbers on the map; 2. the names by which the fields, &c., are commonly known; 3, the state of cultivation, &c.; 4, the acreage; and 5, the names of the tenants.

(*e*) As to the care requisite in the use of a plan, see 2 Dart, V. & P., 1093, 1094; *Micklethwait* v. *Newlay Bridge Co.*, 33 Ch. D. 133. The description should not be entirely dependent, as it sometimes is, on the colouring of the plan; to guard against this, the acreage or dimensions As to use of plan.

annexed hto, *or*, "drawn in the margin," *or*, "on the back of the —— skin," of these psnts, & thrin coloured red, *or*, "thrin surrounded by a red verge line," [such schdle & map being resply taken from the ordnance survey map of the sd parish of ——, & the book of reference to such survey (*a*)].

Reference to deposited plans and books of reference.

XIII. ALL WCH premes are delineated in the plan drawn in the margin of these psnts & thrin coloured red, & in the same plan & also in the deposited plans & books of reference of the sd railway for the sd parish of —— are distinguished by the nos —— resply.

Schedule and plan not to control description in body of deed (*b*).

XIV. ALL THOSE, &c., [*pcels with reference to schdle & plan*] wch schdle & plan are intd & shl be taken merely as assistg & explaing the description hinbfe contd & not as in any way governg, controllg, restrictg or enlarging the same in the event of any variance or discrepancy betn the sd schdle or plan & the sd description, [& all other (if any) the messes, lands, tenemts, or hds wch are comprd or desed in the

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in square yards, or the lateral dimensions in feet (if a small property), should be given in the body of the deed or schedule, and not on the plan only. Colouring by a verge line makes it more difficult to tamper with the deed. If it is desired to guard against the plan controlling the description, form XIV., *infra*, may be used. There are perhaps few things in which more carelessness is to be met with in proportion to their importance than the preparation of plans; but the use of the Ordnance map minimises the risk of error. It would greatly simplify the examination and comparison of parcels in abstracts if the points of the compass were always marked on plans, with the North at the top.

As to Ordnance Survey.

(*a*) A discrepancy between the quantities in the muniments and the Ordnance Survey may arise from the acreage in the latter being always measured to the centre of the hedge, without regard to the ownership of the hedge and ditch. It was formerly common to refer to the map and book of reference of the tithe apportionment, but this, though most useful in its day, and still so as an aid in identifying parcels in investigating titles, is becoming superseded for this purpose by the Ordnance Survey; and the prospect of the latter becoming the basis of a general system of registration of titles (should such a system be hereafter established), is an additional reason for using it in conveyancing transactions. As to the use of the Ordnance map as evidence of boundaries see *Caton* v. *Hamilton*, 53 J. P. 504.

(*b*) Or the following may be used: "WCH premes by way of identificon, & not of limiton, are delineated, &c."

sd schdle hto, but are not comprd in the description hinbfe contd].

Lands, connecting modern with old description.

XV. ALL THOSE, &c., *modern description*, wch premes were formerly pt & pcel of lands called, &c. [were formerly descd & conveyed by the description follg, namely, &c., *or*, "by the sevl names, & as in the tenure or occupon of the sevl psons, & as contg the sevl quantities mentd & set forth in the schdle, &c."].

Freeholds by reference.

XVI. ALL & SINGR the —— hds & premes by the hinbfe recited [within written] indre of, &c., expd to be grted or orwise assured.

Leaseholds by reference to lease.

XVII. ALL & SINGR the —— hds & premes comprd in or expd to be demised by the hinbfe recited [within written] indre of lease of, &c. (*c*).

The same. Mining lease.

XVIII. ALL & SINGR the pces of land, mines, minls, powers, & privileges & all other the hds & premes comprd in & expd to be demised & grted resply by the hinbfe recited indre of, &c.

Where freeholds and copyholds intermixed.

XIX. ALL SUCH, & so many, & such pts & pt of the sevl pces of land, messes, or tenemts & hds hinafter descd, as are of freehd [copyhd] tenure (that is to say), all that, &c.

Undivided share of realty.

XX. ALL THAT undivided moiety, or eql half pt or share, *or*, "eql undivided —— pt or share" [& all other the share, este, & intt, if any, of him, the sd A.] of & in all those messes, &c.

Reversion of undivided share of a share of realty.

XXI. ALL THAT the remr or reversion in fee simple of the sd A., expectant & to take effect in posson upon the dece & failure of issue of the body of the sd B., of & in all that eql undivided —— pt or share of & in all that the one undivided moiety, &c., late of the sd testor X., deced, (being equivalent to one eql —— pt of the entirety,) of & in all that, &c.

(*c*) For a plan, say, "which premes for greater clearness, & not so as to restrict or enlarge the description hinbfe contd, are delineated on the plan in the margin hrof, & thrin coloured, &c." For several leases, say, "the respive hinbfe recited indres of lease of, &c."

Rent-charge.

XXII. ALL that fee farm rent or perpetual yrly rent-chge of £—— chged upon and issuing out of the pces or plots of land delineated in the plan drawn in the margin of these psnts & thron coloured, *or*, edged ——, & all future paymts of the sd rent-chge, togr with all powers & remedies for recovery of the sd rent-chge, & the full benefit of all covts, condons, & provons contd in the sd indre of, &c., for securg the same.

Coal mines without surface.

XXIII. ALL the mines, veins, or seams of coal & cannel in or under all those lands, &c., togr with the full rt & power of makg, sinkg, maintaing, & using all such pits, shafts, drifts, levels, drains, watercourses, & reservoirs, & of constructg, erectg, maintaing, & using all such spoil banks, railroads, tramroads, & other roads, bridges, culverts, bldgs, works, engines, machy, & conveniences whatsr, & of doing all such things in, under, upon, through, or over the same lands or any pt thof as may be necy or convenient for searchg for, workg, gettg, dressg, preparg, carrying away & disposg of the same mines or seams, & the coal to be gotten thfrom, makg from time to time nevs to the sd, *vendor*, his hrs & assns, & his & their lessees & tenants, reasble compenson for all damage thby done or occasd to the sd lands, or any bldgs thron (*a*).

Fixed machinery, &c.

XXIV. TOGR with all machy, steam & other engines, mills, factories, workshops, sheds, bldgs, rlys, tramways, turntables, erons, fixtures, & works affixed or attached to the soil or freehd of the sd —— hds & premes hinbfe assured.

Advowson.

XXV. ALL THAT the advowson, donation, & next & perpetual rt of presenton of & to the rectory [vicarage] of the parish church of ——, in the Coy of ——, & the rts & appurts thto belonging.

Next presentation.

XXVI. ALL THAT the rt of presenton to the rectory [vicarage] of the parish church of ——, in the Coy of ——, for the next avoidce of the same only.

(*a*) See also the forms of reservations of minerals, pp. 425 *et seq.*

Tithes.

XXVII. ALL & all mner of tithes of corn, grain, & hay, & all other tithes whatsr, both great & small, & pcels & portions thof, & all moduses & rent-chges in lieu or commuton of tithes issuing or payable out of or in respt of the lands & hds situate, &c., descd in the schdle hrunder written.

Right of way (*b*).

XXVIII. TOGR also with full rt & liberty for the sd, *pchaser*, his hrs [exs, ads,] & assns, the owners & occupiers of the sd messe & hds, &c., [in common with the sd A., his hrs & assns, & the owners & occupiers for the time being of the other houses situate, &c., *or*, "with all other psons who have or may hrafter have the like rt,"] at all times hrafter, by day or by night, & for all pposes, with or witht horses, carts, carriages, or waggons, laden or unladen, to go, pass, & repass, & to drive cattle, sheep, & other animals along, over, & upon the sd street or road, called, &c., *or*, "leadg from —— to ——," [delineated on the sd plan & thrin coloured red], [the sd, *pchaser*, his hrs [exs, ads,] & assns, from time to time paying his or their due proportion with such other owners or occupiers as afsd [accdg to the extent of his or their frontage] of the expse of maintaing the sd street or road & the fences adjoing the same in pper repair, until the same shl be adopted by the parish or local authority].

The same, to a private dwelling-house only.

XXIX. TOGR also with the rt for the sd, *pchaser*, his hrs [exs, ads,] & assns, the owners & occupiers of the sd messe & hds, known as, &c., at all times hrafter, but on foot only [& betn —— o'clock in the forenoon & —— o'clock in the afternoon only], *or*, "& for all pposes connected with the use & occupon of the sd messe & hds or any messe hrafter erected on the site thof as a private residce, but not further or orwise, with or witht horses or other animals, carts, carriages, or waggons, laden or unladen," to go & return along & over the private road or way leadg from the

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(*b*) As to the effect of a grant of the "exclusive use" of a way, see *Reilly* v. *Booth*, 44 Ch. D. 12.

sd messe & hds to —— [marked —— on the sd plan] [the sd pchaser, his hrs, &c., at his or their expse, keepg the sd road or way & the fences & gates thof at all times in good repair & condon].

The same, for special purpose.

XXX. TOGR with full & free rt & liberty for the sd C., his hrs & assns, at all reasble times hrafter, to pass & repass, with or witht horses & carts, for the ppose of carryg timber & other wood & stone from the sd lands & premes hby assured over the other lands belonging to the sd, *vendor*, situate, &c., *or as the case may be*, but for no other ppose, doing thby no unnecy damage & makg compenson for all damage thby done or occasioned to such other land or the timber or other trees, underwood, or crops thron.

The same, for watering cattle.

XXXI. TOGR with full, &c., at all times hrafter to pass & repass with cattle & other animals from the lands hby assured along the roadway marked —— on the sd plan to the river —— for the ppose of waterg such cattle & other animals at the point marked —— on such plan.

Right to use roads and drains on building estate. Short form.

XXXII. TOGR with the rt at all times hrafter [in common, &c., *as in form* XXVIII., *or*, "in common as afsd,"] to use the sd roads or intd roads known as, &c., *or*, "all common roads made or to be made on the sd —— este," & all sewers, drains, & water-courses now or hrafter made or passg under or along any of the sd roads.

Rights of light (*a*).

XXXIII. TOGR with the perpetual use of such windows as the sd B., his hrs or assns, shl at any time deem expedient to open in any bldgs to be erected on the sd land hby conveyed, in the front or west side of such bldgs, & the rt to the unimpeded access of light & air to all such windows.

Benefit of covenant of indemnity against succession duty entered into by a previous vendor.

XXXIV. TOGR with the benefit of the covt of the sd X. contd in the sd indre, &c., for paymt of the succession duty wch will become payable on the death of the sd Y., as hinbfe mentd, & the rt to be indemnified by the sd X., his hrs, exs, & ads in respt of the liability to such duty psuant to the sd covt.

(*a*) It will be seen that this easement is more extensive than an easement of "ancient" lights, and might prove very onerous.

XXXV. TOGR with the benefit of the covts, restrons, & condons contd in the sd indre of, &c., restrictive of bldg on or user of the pces of land thby assured [with power in the name of the sd, *vendor*, but at the sole risk, cost, & expse of the sd, *pchaser*, his hrs & assns, to sue upon or enforce the pformce & observce of the sd covts, restrons, & condons, or any of them]. Benefit of restrictive covenants (*b*).

XXXVI. OR by whatsr other name or names, quantities (whether more or less), qualities, descriptions, or other parlars, the sd sevl manors, advowson, capital & other messes, farms, lands, cottages, rents, tithes, hds, & premes hinbfe in the 1st, 2nd, & 3rd pts of this schdle descd, or any of them, or any pt or pts thof resply are, or is, or has been at any time htofore called, known, tenanted, distinguished, or descd, & notwg any mistake, omission, or misrecital of the numbers, referces, quantities, qualities, acreages, tenants' names, or other parlars or description hinbfe contd. Clause providing against errors in description in schedule.

PERSONAL ESTATE.

I. ALL THAT poly of assurce on the life of the said A., effected in the —— Assurce Socy, in the name of the sd A., dated, &c., nod., &c., for the sum of £——, & under the ann prem of £——, & the sd sum of £—— assured thby, & all bonuses, addons, & moys to become payable under the sd poly, & the full benefit thof. Policy of assurance.

II. ALL THOSE sevl pols of assurce on the lives of the sd K. & L. resply, the parlars whof, showg the offices in wch & the Several policies described in schedule (*c*).

(*b*) As to the right of a purchaser of one of several plots laid out for building to the benefit of the restrictive covenants entered into by the purchasers of the other plots, see above, p. 313; see also *Gaskin* v. *Balls*, 13 Ch. D. 324; *Nicoll* v. *Fenning*, 19 Ch. D. 258. That the benefit of restrictive covenants should be expressly conveyed, see *Renals* v. *Cowlishaw*, 9 Ch. D. 125, 11 Ch. D. 866; *Tucker* v. *Vowles*, [1893] 1 Ch. 195.

(*c*) The policies may be conveniently described in a schedule arranged in columns, giving the particulars here indicated.

psons in whose names the same resply were effected, & the sums assured thby, & the dates & nos thof, & prems payable in respt of the same, are contd in the schdle hto, & all moys assured by or to become payable under such respive pols.

Bond debt.

III. ALL THAT the hinbfe recited bond, *or*, "ALL THAT bond dated, &c., under the hand & seal of the sd A., whby the sd A. became bound to the sd B. in the penal sum of £—— conditioned for the paymt, &c.," & the ppal moy & intt now due & henceforth to become due for the same, & the full benefit & advantage thof.

Life interest in personalty.

IV. ALL THE este & intt of him the sd, *vendor*, under the hinbfe recited indre of settlemt [will] durg his life in the stks, funds, & secs specified in the schdle hto, or wch may hrafter represent or be substituted for the same, or any pt thof, & in the intt, divds, & annl produce thof resply.

Reversionary interest in personalty.

V. ALL THAT the share, este, & intt of him the sd, *vendor*, under the hinbfe recited indre of settlemt [will], expectant & to take effect in posson on the death of the sd K. [or the default or failure of issue of the sd K. by L. his wife as afsd, wch shl last happen], of & in the stks, funds, & secs, &c., *as in last form*.

Share of residue.

VI. ALL THAT the one eql —— pt or share [& all other (if any) the pt or share], to wch the sd, *vendor*, is entled under the sd will & codls of the sd K. as hinbfe is recited, of & in the residuary real & psonal este of the sd K., or the moys to arise from the sale, conversion, & gettg in of the same, & the intt, divds, rents, & income thof, subjt to & after paymt of the funl & testy expses & debts of the sd testor, & the legies bequed by his sd will & codls, & the duty on any legies bequed free of duty.

Goodwill, machinery, stock-in-trade, book debts, &c.

VII. ALL THAT the goodwill or intt of him, the sd A., of & in the business of —— [carried on by him at ——], & also all the machy, utensils, plant, furniture, materials for manufacture, manufactured goods, chattels, & effects belonging to or used in his sd business, & the book debts the parlars whof are entd in the books of acct of the sd business, & the benefit

of all existg contracts & orders for the supply of articles & things manufactured by him in his sd business.

RESERVATIONS AND EXCEPTIONS (*a*).

Exception or reservation.

I. ALL THOSE, &c., *pcels*, SAVE & except out of the assurce hby made, *or*, "this psnt assurce," All, &c., *or*, "EXCEPT & reserved unto the sd, *vendor*, his [apptees] hrs [exs, ads] & assns, &c.," [AND ALSO by way of assurce, & not of exception or reservon, all, &c.].

Reservation of minerals, with rights of surface working (*b*).

II. EXCEPT & reservg unto the sd, *vendor*, his hrs & assns, all [coal, iron-stone, & other] mines & minls in or under the lands hby assured, with full liberty & power at all times to enter upon the sd lands or any pt thof, to search for, dig, raise, make merchantable, & carry away the sd [coal, iron-stone, & other] mines & minls [witht leavg any support for the surface of the sd lands], & with full liberty & power to make, sink, maintain, & use all such pits, shafts, levels, drains, water-courses, & reservoirs, & to construct, erect,

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(*a*) As to the creation of easements and other rights reserved to the vendor by way of limitation of the use, see the Conv. Act, 1881, s. 62. A deed containing a reservation should be executed by the grantee; *Wickham* v. *Hawker*, 7 M. & W. 63, 76.

As to exceptions and reservations of minerals.

(*b*) As to the right of a surface owner to support, and to compensation for subsidence or other damage to the surface, where there is a reservation of minerals, see *Aspden* v. *Seddon*, 1 Ex. D. 496; *Dixon* v. *White*, 8 App. Cas. 833; *Bell* v. *Love*, 10 Q. B. D. 547, 9 App. Cas. 286; *Consett Waterworks Co.* v. *Ritson*, 22 Q. B. D. 318, reversed on appeal, *ib.* 702. As to compensation for successive subsidences arising from the same act, see *Darley Main Colliery Co.* v. *Mitchell*, 11 App. Cas. 127. As to what is comprised in the word "minerals," see *Midland Rail. Co.* v. *Checkley*, 4 Eq. 19, 25; *Midland Rail. Co.* v. *Haunchwood, &c. Co.*, 20 Ch. D. 552; *Midland Rail. Co.* v. *Robinson*, 37 Ch. D. 386; *Earl of Jersey* v. *Guardians of Neath, &c.*, 22 Q. B. D. 555. As to the difference between an exception and a reservation (not exclusive) and between a licence and a *profit à prendre*, see *Sutherland* v. *Heathcote*, [1891] 3 Ch. 504, [1892] 1 Ch. 475; Elph. Introd. Conv. 99; Goodeve on Real Property by Elph. & C. 330.

maintain, & use all such spoil-banks, railroads, tramroads, & other roads, bridges, bldgs, works, engines, machy, & conveniences whatsr, & to do all such things in, under, upon, through, or over the sd lands, or any pt thof, as may be necy or convenient for all or any of the pposes afsd, makg from time to time nevs to the sd, *pchaser*, his hrs & assns, & his & their lessees & tenants, reasble & adequate compenson for all damage thby done or occasd to the sd lands, or any bldgs thron [other than any damage occasd by the subsidce of the sd lands].

The same, with right of underground working only.

III. EXCEPT & reservg unto the sd, *vendor*, his hrs & assns, all mines & minls in & under the sd lands hby assured, with full power & authority to work & get the same mines & minls, but by underground workgs only, & witht enterg upon or in any mner affectg or exercisg any rts or powers whatsr in or over the surface of the sd lands, & makg, *compenson, see last form ;* [*or*, & so that the sd, *vendor*, his hrs, exs, ads, or assns, shl not be liable or responsible for any depression, subsidce, damage, or injury whatsr wch may be occasd to the surface of the sd land, or to any bldg, erection, machy, or thing for the time being upon the sd land by the workg & gettg by the sd, *vendor*, his hrs, exs, ads, or assns, or his or their lessees of any mines or minls in or under the sd land or any pt thof, or any adjoing land].

Variation if no compensation for injury to surface.

The same. Full form.

IV. EXCEPT & reservg out of the assurce hby made, all mines & minls, whether already opened & in workg or not, in or under the lands hby assured, & every pt thof, & in or under all roads or ways intersectg the sd lands, or any pt thof, & in or under all roads or ways boundg the same lands, to the centre of such roads or ways (other than clay, marl, gravel, & sand, wch can be gotten witht going under or passg through any seam or vein of coal or ironstone), & wch mines & minls (other than & excludg such clay, marl, gravel, & sand as afsd) are hinafter refd to as the excepted mines & minls : with full power for the sd, *vendor*, his hrs & assns, & his & their lessees, agents, servants, & workmen, to search for, get, take, & carry away, & have & take the

rents & profits of the excepted mines & minls; & to sink any pits or shafts, & excavate & drive any underground levels, pits, passages, adits, & headways, & to make & lay down any rlys, tramways, or other ways or roads, above or underground, & to make & lay down any sidings, tramways, or other communicons with or to the —— Rly, & to erect & build any offices, bldgs, engines, pumps, machy, works, or convences, & to place, stack, & lay up any coal, cannel, or other minls, earth, & rubbish to be raised out of any of the sd mines upon such pt of the sd lands as is coloured —— on the sd map or plan, for the ppose of gettg & workg the excepted mines & minls [& any mines or minls in or under the other lands belonging to the sd, *vendor*, wch are coloured —— on the sd map or plan]; & also to make & use for the ppose of the carriage, sale, & delivery, not only of the excepted mines & minls [& of all mines & minls in or under the other lands afsd], but also of all materials, articles, & things wch the sd, *vendor*, his hrs or assns, or his or their lessees, agents, servants, & workmen, may desire to carry or convey to or from any collieries or works for the time being existg on any of the lands coloured —— in the sd map or plan, & for any ppose connected with the use & enjoymt of the sd respive collieries & works, mines & minls, a tramway from the point marked A to the point marked B on the same map or plan on the line marked —— thron, but subjt nevs to the rt of the sd, *pchaser*, his hrs & assns, to make & use any rail or tramways or other roads or ways over, across, or under the sd tramway, but so as not unnecessarily to obstruct or impede the use & workg thof: Provd nevs that no surface rts shl be exercisable under or by virtue of the afsd exceptions & reservons, except in & upon the sd lands coloured —— on the sd map or plan, & that the sd, *vendor*, his hrs & assns (hinafter called the mine owners), shl from time to time on demand, make all due compenson to the sd, *pchaser*, his hrs & assns (hinafter called the surface owners), & the occupiers for the time being of such lands for all such injury or damage as may be done to any bldgs on the sd lands hby

assured, or wch may be erected thron for agricultural pposes, arisg from any act or neglect in workg or gettg the excepted mines & minls [or the mines or minls in or under the other lands afsd], or in the exercise of any of the powers or authorities hby excepted or reserved; & that the mine owners shl also previous to using any of the lands wch they are hby authorised to use, remove the turf & surface soil from the pt of the land about to be used by them, & lay up the same in heaps in some convenient pt of the land; & shl also from time to time fence off with good & substantial posts & rails such pts of the lands wch they are hby authorised to use as they may dig into, occupy, or use by virtue of any of the exceptions or reservons hrin contd, & at all times hrafter keep & preserve such fences in good & substantial repair; & shl also pay to the surface owners for every acre of the lands wch the mine owners shl from time to time enter upon, use, or occupy by virtue of any of the sd exceptions or reservons, the yrly rent of £——, & so in proportion for any greater or less quantity than an acre, by 4 eql qrtrly paymts, on the —— day of ——, &c., clear of all dedons, except ppty tax, the first paymt of such rent, or an apportioned pt thof, to be made on such of the sd qrtrly rent days as shl happen next after any such lands shl be entd upon, used, or occupied, & the sd rent shl continue payable until the land shl be levelled & restored fit for agricultural pposes, & the posson thof delivered up to the surface owners, & shl be recoverable by distress as rent reserved on common demises; & that the mine owners shl also pay all rates & taxes for the time being payable, except ppty tax, in respt of the land so entd upon, used, or occupied, & shl also on demand from time to time pay the surface owners or the occupiers or tenants for the time being of the sd lands, reasble compenson for any damage occasd to any grass, corn, or other crops growg upon the sd lands at the time of entry thron; & that all questions of compenson shl in case of disagrmt be settled by two arbitrors or their umpire; & that these stipulons, so far as they purport to affect the sd,

vendor, shl bind him & his hrs, exs, & ads, & shl also bind the excepted mines & minls, & the owners thof for the time being.

v. EXCEPT & reservg unto the sd, *vendor*, his hrs [exs, ads,] & assns, full & free rt & liberty at all times hrafter, &c. *See pp.* 421—422, *forms* XXVIII.—XXXII. Reservation of right of way (*a*).

VI. EXCEPT & reservg unto the sd, *vendor*, his hrs & assns, the sole & exclusive rt & liberty at all times hrafter of using the water from the reservoir distinguished in the sd plan by a blue colour, for supplying water to the messe & bldgs called ——, now in the occupon of the sd, *vendor*, or any messe or bldgs wch may hrafter be erected on the site thof, in as full & ample a mner as htofore, but for domestic, stable, or horticultural pposes only: AND also the free & uninterrupted flow & passage at all times hrafter of the water from the sd reservoir for such pposes through the pipes & tanks now used for conveyg the same under the lands hby assured, along the lines distinguished by a red colour & the letters E E on the sd plan, & through any pipes & tanks wch may from time to time be substituted for the same: AND also liberty from time to time, with workmen & others, to enter upon the sd lands, & to repair (*b*), renew, cleanse, & maintain the sd reservoir, pipes, & tanks, the sd, *vendor*, his hrs & assns, givg to the sd, *pchaser*, his hrs & assns, & his & their tenants, reasble notice previous to such entry, & doing thby no unnecy damage to the surface of the sd lands, or the timber, trees, underwood, or crops thron, & makg full compenson for all damage done or occasd to the surface of such lands, or the timber, &c., by the exercise of such liberties as afsd. Reservation of right to take water from reservoir.

VII. EXCEPT & ALWAYS RESERVG unto the sd A., his hrs & assns, the full & free rt & liberty at all times hrafter to work the quarry situate in the sd lands hby assured Reservation (non-exclusive) of right to work a quarry.

(*a*) As to implied reservations of necessary easements, see *Wheeldon* v. *Burrows*, 12 Ch. D. 49; *Taws* v. *Knowles*, [1891] 2 Q. B. 564; Elph. N. & C. Interp. Deeds, 200.

(*b*) As to the erection of buildings interfering with the repair of the pipes, see *Goodhart* v. *Hyett*, 25 Ch. D. 182.

at the point marked —— in the sd plan, & to take & carry away the stone thfrom over the sd lands hby assured for the ppose of, &c., but for no other ppose, doing no unnecy damage, &c., & makg compenson, &c., *as in last form*, & so nevs that the sd B., his hrs or assns, shl not by the reservon hinbfe contd be in any way precluded from workg the sd quarry & takg the stone thfrom to such extent as he or they may think fit.

GENERAL WORDS (*a*).

Lands.

1. TOGR with all bldgs, erections, fixtures, hedges, ditches

Omission of general words.

(*a*) The forms of general words in the text are those which before the Conv. Act, 1881, were usually inserted in conveyances of land immediately after the parcels (and before the reservations if any), but are now almost universally omitted, as they are supplied by section 6 of that Act, which provides that a conveyance of land, or of land with buildings thereon, or of a manor, shall imply the usual general words intended to pass the easements or other rights and appurtenances belonging thereto, unless a contrary intention is expressed or indicated. In *Beddington* v. *Atlee*, 35 Ch. D. 317, 331, the question was raised, but not decided, whether express general words less extensive than those in the Act show such a contrary intention. This doubt should be borne in mind if general words are inserted; but there can now rarely be any object in so doing.

As to copyholds.

The clause in the Act applies to a conveyance of copyholds by surrender, as the definition of "conveyance" in s. 2 does not exclude conveyances not by deed.

Minerals.

The clause does not, except in the case of a manor, mention "mines and minerals," which were often included in the general words, though improperly, as they are not appurtenances, but form part of the land, and (except in the case of copyholds, and of conveyances to railway companies, from which latter they are excepted, unless expressly mentioned, by 8 & 9 Vict. c. 20, s. 77) would pass with it unless expressly excepted; in a mineral district they should be specially mentioned. As to what passes with a "manor," see the references above, p. 290, note. The statutory as well as the ordinary clause specifies "fixtures;" but this is immaterial, as a conveyance of land of any tenure would carry all fixtures belonging to the vendor without express mention, including trade or other tenant's fixtures, *i.e.*, such as would be removable as between landlord and tenant; see 2 Dav. Prec. Pt. 2, p. 177, *et seq.* If any fixtures are not intended to pass they must be excepted.

fences, ways, passages, waters, drains, water-courses, woods, underwoods, commons, [mines, minls (*b*),] rights, easemts, & appurts whatsr, to the sd hds & premes or any of them, or any pt thof belonging, or with the same now or htofore held, used, occupied, or enjoyed, or reputed or known as pt or pcel thof, or appurtenant thto.

Manor and lands.

II. TOGR with all houses, bldgs, erections, fixtures, grounds, meadows, pastures, heaths, moors, mines, minls, wastes, warrens, woods, underwoods, coppices, ways, waters, water-courses, courts leet, courts baron & other courts, waifs, estrays, treasure trove, mills, mulctures, customs, tolls, duties, reliefs, fines, heriots, fisheries, fowlgs, franchises, royalties, jurisdons, privileges, rts, &c., *as above*.

House in town.

III. TOGR with all bldgs, outhouses, erections, fixtures, cellars, areas, ways, passages, lights, sewers, gutters, drains, rts, &c., *as in form* I.

Short form for houses or lands.

IV. TOGR with all ways, drains, water-courses, lights,

Easements over ad joining property of vendor

The statutory general words have reference only to easements, &c., existing "at the time of conveyance," and omit the words, "or heretofore," which have usually been inserted (as in the form in the text), and which, it has been supposed, may possibly have some effect where the vendor has other property adjoining, over which a way or other *quasi* easement may have been used with the property sold, but which may be of an intermittent nature, or may temporarily have ceased to be used at the time of the conveyance (see 1 Dav. Prec. 92; Gale on Easements, pp. 66-83; *Bolton* v. *Bolton*, 11 Ch. D. 968; *Roe* v. *Siddons*, 22 Q. B. D. 224); but the words in question are probably quite useless. Whenever such a *quasi* easement is known to exist, it should be expressly granted or excluded. The following is a form of exclusion intended to follow the parcels:—

Conveyance not to include easements over adjoining property of vendor.

"BUT this assurce shl not include or operate as a grt or assurce of any ways, water-courses, or other rts or easemts whatsr over any adjoing land or ppty of the sd, *vendor*, wch appertain to or are reputed to appertain to or have htofore been held or enjoyed with the sd premes hby assured or any pt thof."

As to the implication of easements where there has previously been unity of ownership, see Elph. Interp. Deeds, pp. 189, *et seq.*; *Birmingham, &c., Co.* v. *Ross*, 38 Ch. D. 295; Hood & Challis, Conv. Acts, 21.

(*b*) The words "mines and minerals" apply to freeholds only.

easemts, rts, & appurts to the sd hds & premes or any pt thof belonging, or thwith now or htofore held or enjoyed.

ESTATE CLAUSE (*a*).

Estate clause. General form.

I. AND ALL the este, intt, rt, title, claim, & demand of the sd, *vendor* [of the sd, *conveying pties*, resply], in, to, or upon the sd premes, or any pt thof.

For conveyance under power.

II. AND ALL the este, &c., of the sd, *conveying pty or pties*, in, to, or upon the sd premes, or wch he [they or any of them, are or] is able to appt or dispose of.

For conveyance under statutory authority.

III. AND ALL such este, &c., in, to, or upon the sd premes, as the sd, *conveying pty or pties*, can by statute or orwise convey or assure.

HABENDUM (*b*).

For freeholds.

I. TO HAVE & TO HOLD all the sd hds & premes hby assured UNTO the sd, *pchaser, or grtee to uses*, his [*pchasers, or grtees to uses*, their] hrs & assns (*c*), [subjt to, &c., *state*

Omission of "all the estate clause

(*a*) The "all the estate" clause, which formerly followed the "general words," is now implied by the Conv. Act. 1881, s. 63, in all conveyances, including appointments, unless a contrary intention is expressed or is to be gathered from the terms of the instrument, so that its insertion can now seldom be necessary, and it is almost universally omitted. That such a clause may be controlled by a recital, see *Ex parte Dawes, In re Moon*, 17 Q. B. D. 275.

(*b*) As to the use of the "habendum," see 1 Dav. Prec., 99, *et seq.*; Elph. Introd. Conv., 100, 225.

Limitation of estate in fee simple.

(*c*) An estate in fee simple may now, by the Conv. Act, 1881, s. 51, if the draftsman prefers it, be limited by the words "in fee simple," without the word "heirs;" but the old form is here retained. It is not clear that if the grantor has only a base or other determinable fee, it would pass by a grant "in fee simple" under the Act, as it would if the word "heirs" were used; but this is not a contingency which need usually be taken into account. The enactment does not render the words

or refer to the tenancies or any incumbces & liabilities subjt to wch the ppty is conveyed, see below (*d*)] TO THE USE of the sd, *pchaser*, his [*pchasers*, their] hrs & assns for ever [*if tenants in common, say*, "TO THE USE of the sd, *pchasers*, & their respive hrs & assns, as tenants in common, in eql shares," *or*, "in the shares follg, that is to say, as to one moiety thof to the sd ——, his hrs & assns, as to one eql fourth pt thof to the sd, &c."].

Short form.

II. TO HOLD UNTO & TO THE USE of the sd, *pchaser*, his hrs & assns, *or*, "in fee simple" (*e*), [subjt, &c., *to tenancies or incumbces*].

Subject to tenancies.

III. TO HOLD, &c., subjt to a lease dated, &c., whby the premes were demised to K., for the term of —— yrs from the —— day of ——, at the yrly rent of £——, *or*, "to the leases & tenancies hinbfe, *or*, 'in the schdle hto,' mentd," *or*, "to the subsistg leases & tenancies."

The same. Where the rent payable by the tenant and also the tithe rent is apportioned (*f*).

IV. TO HOLD, &c., subjt to a lease dated, &c., whby the premes (togr with other lands & hds) were demised, &c., at the yrly rent of £——, of wch the yrly rent of £—— shl be the apportioned pt to be henceforth payable in respt of the premes hby assured, & with the benefit of such apportioned rent, & all powers & remedies for the recovery thof, & of the covts by the lessee, & condons contd in the sd lease, so far

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"in fee simple" appropriate in a conveyance to a company or other corporation, but they are often in practice used in such a case, and though unnecessary seem free from objection; but it is a question whether a conveyance to a corporation *sole*, with the words "in fee simple," but without the word "successors," might not confer the fee on the individual instead of on the corporation. As to conveyance to corporations, see Challis, R. P. 197.

Reference to incumbrances, &c., in habendum.

(*d*) According to the more technically correct practice, which should be adhered to in a conveyance to uses, the incumbrances, &c., subject to which the conveyance is made are stated, as in the above form, before the declaration of uses; but in a simple conveyance in fee, in which the declaration of the use is in fact usually mere surplusage the short form No. II. is preferable.

(*e*) See note (*c*), last page; and the forms in the 4th schedule to the Conv. Act, 1881, which have a statutory sufficiency by virtue of s. 57.

Apportionment of rent.

(*f*) That a covenant to pay rent is divisible on an assignment of the reversion of part of the demised premises, see *Mayor of Swansea* v. *Thomas*, 10 Q. B. D. 48. As to the effect of part of the premises by the assignee, see *Baynton* v. *Morgan*, 22 Q. B. D. 74.

as the same relate to the premes hby assured, And subjt to the paymt of a yrly sum of £——, or the equivalent thof for the time being under the provons of the Acts for the commuton of tithes, as an apportioned pt of the yrly sum mentd in the apportionmt of the tithe rent-chge for the sd parish of ——, as payable in respt of an inclosure of wch the premes hby assured form pt.

Subject to mortgage, rent-charge, or succession duty.

v. To hold, &c., subjt to the hinbfe recited indre of mtge, & the ppal sum of £—— now owing on the secy thof, & the intt due & to become due on such sum from the —— day of —— last, *or*, "to the paymt of the sd anny or rent-chge of £—— from the —— day of —— last," *or*, "subjt to the succession duty to become payable on the death of the sd X. in respt of the premes."

Subject to obligations and restrictive covenants.

vi. To hold, &c., subjt to the obligons & restrons hinafter expd & imposed on the sd, *pchaser*, his hrs & assns.

Subject to reservations and restrictions in a former conveyance (*a*).

vii. To hold, &c., *to pchaser in fee*, subjt to such exceptions & reservons of the —— & other mines & minls in & under the sd lands & premes, & rts of workg & gettg the same, & orwise in relon thto, & to such rts of way & water, & other easemts & rts, as were by the hinbfe recited indre of, &c., excepted or reserved to or in favour of the sd X., his hrs & assns, or orwise: But with the benefit (*b*) of the provons in the sd indre contd for compensatg the sd, *vendor*, his hrs & assns, in respt of land taken or occupied for the ppose of, or damage done in workg or gettg the sd mines & minls, or the exercise of the powers & liberties thby given to the sd X., his hrs & assns: And subjt also to the covts by the sd, *vendor*, & provons in the same indre contd, restrictive of the rt of bldg on, or user of the sd lands & premes or orwise, To the use, &c.

Free from a specified incumbrance.

viii. To hold, &c., Unto the sd, *pchaser*, his hrs & assns, dischged from all ppal moys & intt intd to be secd by, &

(*a*) As to the right of the vendor to insert in the conveyance such a reference to restrictive covenants or obligations to which the property is, or is alleged to be, subject, see *Re Monckton*, 27 Ch. D. 555; *Hardman* v. *Child*, 28 Ch. D. 712.

Restrictive covenants.

(*b*) In general everything the benefit of which is included in the conveyance should precede the habendum; see Elph. N. & C. Interp. Deeds 212.

from all claims & demands under the hinbfe recited indre of, &c. [but subjt, *to leases, &c.*], To the use, &c.

Freeholds to uses afterwards declared.

IX. To hold the same Unto the sd, *grantee or grantees to uses*, & his [their] hrs [subjt, &c.] To the uses, upon the trusts, & subjt to the powers & provons hinafter limd, decld, & expd of & concerng the same.

Freeholds to uses of settlement or will. Variation for disentail and re-settlement (*b*).

X. To hold the same Unto the sd, *trees or grantees*, & their hrs [subjt, &c.] To the uses, upon the trusts, & subjt to the powers, chges, & provons to, upon, & subjt to wch, under or by virtue of the sd indre of settlemt of, &c., *or*, "the sd will & codls of the sd X.," or the exercise of any power of chging thrin contd, the freehd hds [in the coy of ——] comprd in & remaing subjt to the sd indre of settlemt [will] (*c*) now stand limd & settled, or as near thto as the case may permit, but not so as to increase or multiply chges or powers of chging.

The same. Another form.

XI. To the uses, upon the trusts, & subjt to the powers & provons to, upon, & subjt to wch the same premes ought to be held by reason of the same havg been pchased with capital moys arisg under the hinbfe recited settlemt [will] as afsd.

Freeholds upon trusts.

XII. To hold, &c., Unto & to the use of the sd, *trees*, their hrs & assns [subjt, &c.] upon the trusts, & subjt to the powers & provons hinafter decld & expd of & concerng the same, *or*, "upon the trusts, &c." *as in last form, or*, "upon the trusts & subjt to the powers & provons upon & subjt to wch the same premes ought to be held by virtue of the sd indre of settlemt of, &c. [the sd will & codls of the sd X.]."

(*b*) This form is generally suitable. See also observations and proposed form in Lewin on Trusts, p. 559.

Variation.

(*c*) If there has been a disentail and re-settlement, and any of the estates or charges, &c., under the original settlement are still in force, say, "under or by virtue of the sd, *origl settlemt*, & the sd, *disentailg assurce*, & the sd, *resettlemt*, or the exercise of any power of chging in the sd respive indres contd, the freehd hds comprd in & remaing subjt to the sd, *origl settlemt*, now, &c."

Freeholds to lessee where there is a sub-lease (*a*).

XIII. To HOLD the same unto the sd, *pchaser*, & his hrs subjt to the sd term of —— yrs created by the sd lease of, &c., & to the intent that the sd term may be henceforth absolutely merged in & consold with the revon & inhance in fee simple of the sd hds & premes expectant on the determon of the same term, but not so as to prejudice or affect the sd underlease of, &c., & so that the benefit of the rent reserved by & the covts on the pt of the lessee & condons contd in the sd underlease, shl henceforth be & remain incident & annexed to the freehd of the same premes To THE USE of the sd, *pchaser*, his hrs & assns.

Leaseholds.

XIV. To HOLD the same UNTO the sd, *pchaser*, his exs, ads, & assns, henceforth for all the residue now unexpired of the sd term of —— yrs (*b*), grted by the sd indre of lease, subjt henceforth, *or*, "as from the —— day of ——," to the paymt of the rent & the pformce & observce of the covts on the pt of the lessee & condons by & in the same indre reserved & contd [& subjt to an underlease of, &c., *or*, "to the subsistg underleases or tenancies of the sd respive hds & premes"] (*c*).

(*a*) See 8 & 9 Vict. c. 106, s. 9.

(*b*) For several leases, say, "respive terms of —— & —— yrs," "respive indres," &c.

Variation for assignment of part of premises held under the lease subject to apportioned rent.

(*c*) If the sale is of part only of the property in the lease, the rent having been apportioned on a former occasion, say:—

"SUBJT to the yrly rent of £——, being the apportioned pt payable in respt of the premes hby assned of the entire rent of £——, reserved by the sd lease as hinbfe is recited, & to the pformce & observce of the covts on the pt of the lessee & condons contd in the sd lease so far as the same relate to the premes hby assned, & subjt to such liability as is subsistg under the sd lease or orwise to the paymt of the remaing portion of the sd entire rent & to the pformce & observce of the sd covts in respt of the remaing portion of the premes comprd in the sd lease, but with the benefit of all the covts, powers, & provons contd in the hinbfe recited indre of assnmt of, &c., or orwise subsistg, for securg the

XV. To HOLD all such pts of the sd hds & premes as are of freehd tenure UNTO & TO THE USE of the sd, *pchaser*, his hrs & assns [subjt, &c.], & To HOLD all such pts of the sd hds & premes as are of leasehd tenure UNTO the sd, *pchaser*, his exs, ads, & assns, henceforth for all, &c., *as in last form*. Freeholds and leaseholds combined.

XVI. To HOLD the same UNTO the sd, *trees*, their exs, ads, & assns, &c., *as in form* XIV., upon the trusts, &c., *as in form* X., *or*, "upon such trusts, & subjt to such powers & provons as shl correspond with the uses, trusts, powers & provons to, upon, & subjt to wch under, &c.," *as in form* X., *or*, "upon the trusts of the sd settlemt of, &c., [the sd will & codls of the sd X.]." Leaseholds upon trusts of settlement or will.

XVII. To HOLD, &c., *to pchaser*, free from all rt or equity of redmon, & from all claims & demands under the hinbfe recited indre of mtge. Freeholds or leaseholds free from equity of redemption.

XVIII. To HOLD the same UNTO the sd, *married woman*, her hrs & assns [*for leasehds*, exs, ads, & assns, henceforth, &c., *as in form* XIV.,] [as her separate ppty independently of her psnt or any future husbd] (*d*). Freeholds or leaseholds to married woman.

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paymt, pformce, and observce of & indemnifying the sd, *vendor*, his exs, ads, & assns in respt of such remaing portion of the sd entire rent & any breach of the sd covts & condons in relon to such remaing portion of the premes [& subjt, *to tenancies, &c.*].

(*d*) A conveyance may now by virtue of the Married Women's Property Act, 1882, ss. 1 & 5, be made to a married woman (whenever married) so as *ipso facto*, and without any express declaration that the property is to be her separate estate, to make it such, and to give her the same power of disposition as if she were a *feme sole*. Previously to the Act, as the separate estate was only an equitable creation, her power of disposing of it as a *feme sole* did not extend to the legal estate, unless (in the case of freeholds) a power of appointment over the use was limited to her; the proper mode of conveyance so as to exclude the husband being to interpose a trustee, and (for freeholds) to make the conveyance to such uses as the married woman should by deed or will appoint, and in default to the use of the trustee for her for her separate use. But as the statutory separate estate operates at law as well as in equity, there is now no object in giving a power of appointment, or interposing As to conveyances to married women.

Freeholds and leaseholds as partnership property (*a*).

XIX. To HOLD the same UNTO [& to the use of] the sd, *p'ners*, their hrs [exs, ads] & assns as jt tenants [*if leaseholds, for residue of term, &c., form* XIV.], in trust for them, the sd, *ptners*, their exs, ads, & assns as pt of their co-ptnp este [but so that after the death of eir of them, the sd, *ptners*, the survor of them or the hrs, exs, or ads of such survor shl have full power, witht the concurrce of the exs or ads of the one of them so first dying, to sell, mtge, lease, or orwise dispose of the premes, or any pt thof, & to rece & give effectual dischges for any moys arisg from any such disposon, & that every such disposon or rect shl be absolutely bindg upon all psons havg or claimg any intt in the ptnp este (*b*)].

Personalty.

XX. To HOLD the same UNTO the sd, *pchaser*, his exs, ads, & assns, for his absolute benefit, *or*, "absolutely."

COVENANTS FOR TITLE.

PRELIMINARY NOTE.

Implied covenants for title under the Conv. Act, 1881.

The Conv. Act, 1881, s. 7, contains provisions whereby a conveyance of any property, real or personal, may, by inserting the appropriate words, be made to imply, in the case of a conveyance for value, whether by way of sale, mortgage, settlement or otherwise, the ordinary covenants for title and further assurance; or in the case of a conveyance, whether for value or not, by a trustee or mortgagee, or other person in a fiduciary position, the ordinary covenant against incumbrances; so as to render the insertion of express covenants unnecessary. The provisions relating to mortgages and settlements will be noticed under those headings. The following is the substance of those relating to conveyances on sale.

By beneficial owner.

First, In a conveyance *for value* (other than a mortgage), where a person *conveys and is expressed to convey* as "beneficial owner," the Act implies the usual qualified covenants by him for title and further assurance, as regards the subject matter *expressed to be conveyed* by him (subs. (1) A); and also in a conveyance of leaseholds, that the lease is

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a trustee; and the words bracketed, being merely declaratory of the intention that the Act is to apply, might be omitted; but it seems better to insert them.

(*a*) This is considered to be the proper form. The subject is discussed in an article in 33 Sol. J. 103.

(*b*) The words in brackets are not really necessary; see Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 20 (2).

valid, and that the rent has been paid and the covenants performed (subs. (1) B).

To whose acts the covenants extend.

The general effect of the clause, stated shortly, is that the liability under the covenants extends to the acts of every ancestor, testator or settlor under whom the conveying party derives title since the last conveyance for value (not being a marriage settlement), and the acts of persons claiming under the conveying party or any such ancestor, testator or settlor (as to which see *David* v. *Sabin* [1893] 1 Ch. 523), and to the acts of any person conveying by direction of the conveying party. The exception as to marriage settlements was no doubt inserted on the ground that such a settlement may not contain full covenants for title; see s. 7, sub-s. (1) E.

Effect of covenants where there are concurring parties.

In reading the statutory covenants into the deed it will be seen that the first branch (for right to convey) being that the covenantor, with the concurrence of the persons, if any, conveying *by his direction*, has power to convey, does not fit the common case of a person joining to release a charge who is under no obligation to do so, and cannot properly be made to convey "by direction" of the vendor, *e.g.*, a mortgagee who is not fully paid off, or an annuitant. To avoid inaccuracy the concurring parties might be made to convey "by the direction" of the implied covenantor "for the purpose only of implying the proper covenants;" which, however, would make the covenantor liable for the acts of the concurring parties. But this flaw in the Act, arising from the erroneous introduction into the covenant for right to convey of the words "by his direction" is not regarded in practice as of any moment.

By fiduciary owner.

Secondly, In any conveyance by a person who *conveys and is expressed to convey* as "trustee" or "mortgagee," or as "personal representative of a deceased person," or as "committee of a lunatic," or "under an order of the Court," the Act implies the usual qualified covenant by him (as to his own acts, &c., only), against incumbrances, as regards the subject matter *expressed to be conveyed* by him (sub-s. (1) F.).

Annuitant or person having lien.

There are some cases to which none of the above expressions are strictly appropriate, *e.g.*, an annuitant or person having a mere lien, or the liquidator of a company; the statutory words might be used in such a case to imply the covenant; but it is better to insert an express covenant. Occasionally a person covenants against incumbrances and also for further assurance; in that case an express covenant is necessary for the latter purpose (the statutory covenant for further assurance implied by the words "as settlor," see SETTLEMENTS, not being appropriate), and had better be inserted for the former purpose also.

Voluntary conveyance.

In a voluntary conveyance no covenant would be implied by the grantor conveying "as beneficial owner," as those words only raise covenants in a conveyance for value (see above); but if he conveys "as settlor," a limited covenant for further assurance would be implied (see SETTLEMENTS). The full covenants might be implied by express words incorporating them; but it is not usual to insert them in such a case.

Extent of covenants.

The statutory covenants extend to the whole fee simple or other estate or interest *expressed to be conveyed* by the implied covenantor, whatever

his actual estate or interest may be, or may appear to be on the face of the conveyance.

By several parties. Where more than one person joins in the conveyance, the covenant implied in the case of each of them extends to the subject matter or share of subject matter *expressed* to be conveyed by him (sub-s. 1).

By directing party. The Act also provides for the case of a person who joins in the conveyance merely as a directing party, by enacting (sub-s. 2) that if one person conveys by the direction of another who is "*expressed to direct as beneficial owner*," the same covenants by the latter shall be implied as if he had conveyed and been expressed to convey "as beneficial owner" the subject matter conveyed by his direction.

Consenting party. A tenant for life or other person who is merely a consenting party and has no power to direct the conveyance, may be made to do so for the purpose only of implying covenants for title; or he may for this purpose convey, by way of confirmation, as beneficial owner (in which case, however, the covenant for right to convey would be faulty, see above); or the statutory covenants may be incorporated by express words.

By a married woman. The implied covenants may be raised in the case of a married woman who joins in the conveyance (see sub-s. 3) so as, by virtue of the Married Women's Property Act, 1882, s. 1, to bind her separate estate in the same manner as if the covenant were express; and it is provided (sub-s. 3) that if the wife conveys "as beneficial owner," and the husband also conveys "as beneficial owner," then the wife is to be deemed to convey and to be expressed to convey by direction of the husband as beneficial owner, and in addition to the covenant implied on the part of the husband there is also to be implied a covenant by him in the same terms as the covenant implied by the wife, the effect being that three covenants are implied; *first*, by the wife, binding her separate estate, as to the acts of herself and persons under whom she claims; *second*, by the husband, as to the acts of himself and the person under whom he claims; *third*, by the husband, as to the acts of the wife, and persons under whom she claims.

By husband and wife.

Benefit of implied covenants. The implied covenants are in every case with the person to whom the conveyance is made, or with the persons jointly if more than one to whom the conveyance is made as joint tenants, or with each of the persons if more than one to whom the conveyance is made as tenants in common (sub-s. 1); and the benefit of them goes with the estate of the implied covenantee, and (by sub-s. 6) is enforceable by every person in whom such estate is wholly or partially vested, and where the covenant is with two or more, the benefit is to survive (s. 60). In a conveyance to uses the implied covenants would (in the same manner as express covenants) be with the grantee to uses.

Construction. By s. 64, in the construction of an implied covenant words importing the singular may be read plural, and *vice versâ*, and the masculine gender the feminine.

The implied covenants may be varied or extended by deed (sub-s. 7).

Application of the Act. The enactment applies to every description of assurance by deed, and whether by grant, assignment, appointment, or otherwise, of any kind of property, real or personal, including a covenant to surrender copyholds (see the definition of "conveyance" in s. 2); but not to a customary

assurance, otherwise than by deed, of copyhold or customary land, nor to a lease at a rent (sub-s. 5). Although the right to admittance generally arises only on a surrender, by the special custom of some manors it may be conferred by deed (*Thompson* v. *Hardinge*, 1 C. B. 940), in which case the enactment would of course apply (see Hood and Challis, 34).

Adoption of Act.

The statutory covenants are sufficiently in accordance with the previously established practice, to be adopted, and they are practically universally relied on in all ordinary cases; but occasionally it may be necessary to insert express covenants (as where the property is situate abroad), or to vary the statutory covenants.

As to the protection afforded to solicitors and trustees adopting the Act, see above, p. 257, note.

Use of particular words is essential.

In order to raise the proper statutory covenants, it is essential that the conveying party should expressly convey or direct the conveyance "as beneficial owner," or convey as "trustee" or "mortgagee," &c., as the case may be. Without these or some such express words no covenant will be implied, although the fact that he is beneficial owner or trustee, &c., may appear from the recitals or otherwise (see sub-s. 4). But it is considered to be clear that it is not necessary to follow the precise words of the Act, so long as the character in which the person conveys is sufficiently expressed; *e.g.*, in a conveyance by the "personal representative" of a deceased person it is certainly not essential to use those words in lieu of "executor" or "administrator;" but where the full covenants for title are to be implied (which is the important case), it is the prudent and settled practice to use the words "as beneficial owner."

As to word "convey."

It must not be supposed that because the word "convey" is used in this section, and in the forms in the 4th schedule to the Act, it is therefore necessary to use that particular word to imply the covenants. The word "convey" in the Act includes all the ordinary modes of conveyance (see s. 2, and above, p. 385, note); and it is quite clear that the ordinary operative words of conveyance will suffice, both to pass the estate and raise the covenants for title.

Conveyance by tenants in common, &c.

It is necessary, where tenants in common or others having limited interests join in conveying, to insert words defining the particular share or interest which each party conveys, in order that the implied covenant of each may extend to such share or interest only, and not to the entirety; or else to limit the operation of the covenant in this respect by a subsequent proviso, which is often better.

By joint tenants.

In a conveyance by joint tenants, or by donees of a joint power of appointment, as they jointly convey the entirety, the implied covenant would it seems be a joint one extending to the entirety: and if it is desired to limit the liability of each to the share to which he would be entitled on a severance, a proviso qualifying the statutory covenant must be inserted.

"Grant" under L. C. C. Act, 1845.

Reference may here be made to the Lands Clauses Consolidation Act, 1845, s. 132, by which the word "grant" in a conveyance by a railway or other company under that Act, implies the usual covenants for title.

See also, 1 & 2 Vict. c. 20, s. 22, and the Acts referred to in Elph. Introd. Conv. p. 91.

The common forms of express covenants for title, &c., with the ordinary variations indicated in notes, are here given, together with some forms to indicate the mode of implying the statutory covenants, with forms of provisoes for modifying the express or implied covenants.

I.

Freeholds, Copyholds, *and* Leaseholds *by* one Vendor *to* one Purchaser. *With* Variations (*a*).

That lease is good, &c.

And the sd, *vendor*, doth hby covt with the sd, *pchaser*, his hrs, exs, ads, & assns that notwg anything by him, the sd, *vendor*, [or the sd X. deced] done, omitted, or knowingly suffered to the contrary, the sd lease is now valid & subsistg & in nowise forfeited, surrendered, or become void

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Covenants when extended to acts of ancestors and testators.

(*a*) Where a vendor can present a clear title, which he claims under a purchase for valuable consideration, he covenants only for his own acts. In the case of a title derived under a will or intestacy the covenant extends to the ancestors and testators respectively. The words in brackets "or the said X., deceased," are applicable where the covenant extends only to the acts of a particular ancestor or testator. Under the statutory covenants a vendor claiming under a settlement (whether voluntary or for value), would be liable also for the acts of the settlor ; see p. 439.

Variations. Several leases.

For several leases, say "respive leases," and "respive terms, &c."

Other parties concurring.

If trustees, mortgagees, or other parties join in the conveyance, the covenant will be that "the sd, *vendor*, with the concurrce of the sd, *other conveyg pties*, now hath full power, &c."

Other forms of conveyance.

For the word "assure," the words "grt," "appt," "appt & grt," "rele," or "convey," may be substituted according to the nature of the conveyance.

To uses of settlement or will.

In a conveyance to the uses of a settlement or will, or any uses less simple than to the purchaser in fee, substitute for the words "to the use of the sd, *pchaser*, his hrs & assns," the words "to the uses & in mner hinbfe expd."

Leases or incumbrances.

The above form is applicable to a sale subject to leases or incumbrances If not required, the words "subjt, &c." will be omitted throughout.

or voidable: And that the rent & covts on the pt of the lessee & condons by & in the sd lease reserved & contd have been duly pd, observed, & pformed up to the date of these psnts: And that notwg anything by him the sd, *vendor*, or any of his ancestors or testors [*or*, the sd X. deced] done, omitted, or knowingly suffered, he the sd, *vendor*, now hath full power to assure all the sd freehd hds & premes hinbfe expd to be hby assured to the use of the sd, *pchaser*, his hrs & assns, subjt as afsd, *or*, "subjt to the sd respive leases, chges, & incumbces to wch the assurce hby made is hinbfe expd to be subjt," & to surrender all the sd copyhd hds & premes hinbfe covted to be surrendered to the use of the sd, *pchaser*, his hrs & assns in mner & subjt as afsd accdg to the custom of the sd manor, & to assn all the sd leasehd hds & premes hinbfe expd to be hby assned unto the sd, *pchaser*, his exs, ads, & assns for all the residue now unexpired of the sd term in mner & subjt as afsd: And that the sd freehd & copyhd premes & every pt thof shl remain & be to the use of the sd, *pchaser*, his hrs & assns in mner afsd, & that the sd leasehd premes shl durg the residue of the sd term remain & be to the sd, *pchaser*, his exs, ads, & assns, in mner afsd, & that all the sd hds & premes shl be quietly entd into & upon & held & enjoyed, & the rents & profits thof reced accdly subjt as afsd witht any interruption, claim, or demand by the sd, *vendor*, his hrs, exs, or ads, or any pson claimg under or in trust for him or any of his ancestors or testors [*or*, the sd X. deced] other than & except any pson or psons claimg in respt of any of the chges or incumbces afsd: And that dischged from or orwise by the sd, *vendor*, his hrs, exs, or ads sufftly indemnified agst all incumbces, claims, & demands created by him the sd, *vendor*, or any of his ancestors or testors [*or*, the sd X. deced] or any pson or psons claimg or to claim through, under, or in trust for him, them, or any of them save as afsd: And that he the sd, *vendor*, & every pson havg or claimg any este, rt, or intt in or to the sd freehd, copyhd, & leasehd premes resply, or any of them, or any pt thof

That rent and covenants paid and performed.

For right to convey and assign, &c.

For quiet enjoyment.

Free from incumbrances.

For further assurance.

resply, under or in trust for him the sd, *vendor*, or any of his ancestors or testors [*or*, the sd X. deced] will at all times, at the cost of the pson or psons requirg the same, exte & do all such assurces & acts for the further or more effectually assurg the sd freehd & copyhd premes, or any pt thof resply, to the use of the sd, *pchaser*, his hrs & assns, in mner & subjt as afsd, & assng the sd leasehd premes, or any pt thof, unto the sd, *pchaser*, his hrs, ads, & assns for the residue wch shl be then unexpired of the sd term, in mner & subjt as afsd, as shl be reasbly required.

II.

FREEHOLDS *or* COPYHOLDS, *in a conveyance by* JOINT TENANTS, TENANTS IN COMMON, *or* COPARCENERS, *one being a* MARRIED WOMAN *whose* HUSBAND *joins.* VARIATIONS, *where the parties are interested in* UNEQUAL SHARES. *Also where the* WIFE *covenants. Also for a conveyance by* TENANT *for* LIFE *and* REMAINDERMEN (*a*).

For right to convey.

AND (*b*) each of them the sd, *covtors by name*, [*or*, the sd pties hto of the —— & —— pts], other than the sd, *wife*, so as to be ansble or liable only in respt of, *if jt tenants*, "one eql —— share of or in the sd hds & premes hby assured," *if tenants in common or coparceners*, "the share

(*a*) For other variations, see note to last form.

(*b*) For a conveyance by tenant for life and remaindermen, say,

Variation for conveyance by tenant for life and remaindermen.

"AND the sd, *tenant for life*, so far as relates to the title & further assurce of the sd hds & premes hby assured durg his life, & each of them the sd, *remrmen*, so far as relates to the title to & further assurce of one eql —— pt or share of or in the same premes, *or*, 'the pt or share of or in the premes to wch he is or claims to be entled as afsd,' in remr expectant on the life este of the sd, *tenant for life*, thrin doth hby, &c."

or intt of or in the sd hds & premes hby assured to wch the covtg pty or his wife is or claims to be entled, or has or claims to have power to appt or dispose of as afsd," & only in respt of the acts & defaults of himself or herself, & of his or her ancestors or testors, & of psons claimg under or in trust for him, her, or them resply, & in the case of the sd, *husbd*, in respt of the acts & defaults of the sd ——, his wife, & of psons claimg under her, but not further or orwise (*c*), doth hby covt with the sd, *pchaser or grtee to uses*, his hrs & assns, that notwg anything by them, the sd covtg pties, & the sd, *wife*, or any of them, or any of their ancestors or testors, or any pson claimg under or in trust for them or any of them, done, omitted, or knowgly suffered to the contrary, they, the sd covtg pties, & the sd, *wife*, resply now have full power, *for rt to convey as in* No. I. : *For quiet enjoymt, as in* No. I., witht any interruption, claim, or demand by the sd covtg pties & the sd, *wife*, or any of them, or any pson claimg under or in trust for them or any of them, or any of their ancestors or testors : And that dischged from, or orwise by the sd covtg pties resply, or their respive hrs, exs, or ads, indemnified agst all estes & incumbces created by the sd covtg pties, & the sd, *wife*, or any of them, or any of their ancestors or testors, or any pson claimg under or in trust for them or any of them : And further that the sd covtg pties & the sd, *wife*, resply, & every pson havg or claimg any este, rt, or intt in or to the premes, or any pt thof, under or in trust for them, or any of them, or any of their ancestors or testors, will at all times hrafter, &c., *for further assurce, as in* No. I.

For quiet enjoyment.

Free from incumbrances.

For further assurance.

(*c*) If the wife covenants to bind her separate estate, add here, "& the sd, *wife*, to the intent to bind her separate este, & so far as regards one eql —— share, *or*, " the share to wch she is or claims to be entled as afsd," of & in the sd premes, & the acts & defaults of herself & her ancestors & testors, & psons claimg under or in trust for them or any of them resply, but not further or orwise."

Variation. Covenant by wife to bind her separate estate.

III.

Personal Property. Variation *for life* Policy.

For right to assign, &c.

And the sd, *vendor*, doth hby covt with the sd, *pchaser*, his exs, ads, & assns (*a*), that notwg anything by him, the sd, *vendor*, [or the sd X. deced], done, omitted, or knowgly suffered to the contrary (*b*), he, the sd, *vendor*, now hath full power to assn the premes hinbfe expd to be hby assned unto the sd, *pchaser*, his exs, ads, & assns in mner afsd, free from incumbces: And that he, the sd, *vendor*, & every pson havg or claimg any este, rt, or intt in or to the premes, or any pt thof, under or in trust for him [or the sd X. deced] will at all times, at the cost of the sd, *pchaser*, his exs, ads, or assns, exte & do all such assurces & acts for the further or more effectually assurg the premes or any pt thof unto the sd, *pchaser*, his exs, ads, & assns, & enablg him & them to recover, rece & obtain paymt & transfer of the same as shl be reasbly required.

For further assurance.

IV.

Covenant *against* Incumbrances *by* One *with* One *for* Real *or* Personal *Estate*. Variations *for a conveyance to* Joint Tenants, *or* Tenants *in* Common.

And the sd, *covtor*, doth hby covt with the sd, *pchaser or grtee to uses*, his hrs [for *leashds or psonalty*, his exs, ads],

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(*a*) The words "exs, ads, & assns," may here be omitted; see p. 3, note.

Policy.

(*b*) For a policy of assurance, say, "the sd poly is now valid & subsistg & in nowise forfeited or become void or voidable, & that notwg any such thing as afsd," and describe the property as "the sd poly & premes hinbfe expd, &c."

& assns (*c*), that the sd, *covtor*, hath not at any time htofore done, or knowgly omitted or suffered, or been pty or privy to anything whby or by means whof the premes hinbfe expd to be hby assured (*d*), or any pt thof, are, is, or may be incumbered or affected in any mner whatsr, or whby he, the sd, *covtor*, is in anywise prevented from assurg the same premes, or any pt thof, in mner afsd.

V.

COVENANT *against* INCUMBRANCES *by* TWO *or more with* ONE *for* REAL *or* PERSONAL *Estate* (*e*).

AND each of them the sd, *covtors*, so far as relates to his own acts & omissions only, doth hby covt with the sd, *pchaser or grtee to uses*, his hrs [*for leaselds or psonalty*, his exs, ads], & assns, that they the sd covtors, or, "the sd covtg pties," resply, have not at any time htofore done, or knowgly omitted or suffered, or been pty or privy to anything whby or by means whof the premes hinbfe expd to be hby assured or any pt thof, are, is, or may be incumbered or affected in any mner whatsr, or whby they, the sd, *covtors*, *or*, "the sd covtg pties," resply, are in anywise prevented from assurg the same premes, or any pt thof, in mner afsd.

(*c*) For a conveyance to joint tenants say, "their hrs, *or*, 'exs, ads,' & assns." For a conveyance to tenants in common, add, "& as a separate covt with each of them, &c." As to the omission of the words "hrs & assns," *or*, "exs, ads & assns," in the case of the covenantee, see the Conv. Act, 1881, s. 58, above, p. 3, note.

(*d*) For "assured" and "assurg," the words "grted," "grtg," or as the case may be, may be substituted, see note (*a*) to Form 1.

(*e*) For variations for conveyance to joint tenants or tenant in common &c., see notes to last form.

IMPLIED COVENANTS (*a*).

Absolute owner (*b*).

I. The sd, *vendor*, **as benefl owner**, doth hby grt [*or*, assn, appt, *or as the case may be*], &c.

Joint tenants (*c*).

II. The sd, *vendors*, jtly **as benefl owners** do hby grt [*or*, assn, appt, *or as the case may be*], &c.

Tenants in common (*d*).

III. The sd, *vendors*, each of them conveyg **as benefl owner** of one undivided moiety [eql —— share] of the hds & premes hby assured, *or*, "of the respive share, este, or intt in the hds & premes hby assured to wch he is or claims to be entled as hinbfe appears," & all other (if any), his este or intt thrin, do resply hby grt, &c.

The same. Another form (*d*).

IV. The sd A., **as benefl owner** as to one undivided eql —— share of & all other if any his este or intt in the hds & premes hby assured, & the sd B., **as benefl owner** as to one undivided eql —— share of & all other (if any) his

(*a*) See above, p. 438.

(*b*) This implies the usual covenants for title and further assurance by the vendor.

(*c*) This implies the usual covenants for title, &c., by the vendors jointly, extending to the entirety of the property. If it is desired to restrict the covenants to the shares to which they would be entitled on a severance, the proviso, p. 452, should be inserted.

(*d*) These imply the usual covenants for title, &c., by each of the vendors extending to his own share only. In defining the shares or estates which each party conveys with the object of restricting his covenants for title, care is required that this does not operate also to restrict the operation of the conveyance in case the share or interest of any of the parties should be misstated, and should in fact be greater. The general words "and all other, &c.," are therefore added. See another form of such general words at the end of Form XII., *infra*. Where the interests of the conveying parties are various, and appear from the recitals, it may be simpler and less troublesome to make the parties convey "accdg to their respive estes, shares, powers, & intts, as hinbfe appearg, & all other (if any) their respive estes, &c.," without defining, but with a statement of the character, whether as beneficial owner or trustee, &c., in which each conveys; if this form is adopted it will be unnecessary to limit the operation of the covenants by the proviso at p. 452.

este or intt in the same premes, &c., &c., do resply hby grt, &c.

v. The sd A., **as benefl owner** as to the este for his life in the hds & premes hby assured, & the sd B., **as benefl owner** as to the revon in fee simple expectant on the life este of the sd A. in the same premes, do resply hby grt, &c. Tenant for life, and remainderman in fee or tail (*e*).

vi. The sd, *wife*, **as benefl owner** [with the concurrce of the sd, *husbd*] doth hby, &c. Wife (*f*).

vii. The sd, *wife*, **as benefl owner**, doth hby grt, & the sd, *husbd*, **as benefl owner**, doth hby grt, & confirm, &c. Husband and wife (*g*).

viii. The sd, *vendors*, each of them conveying **as benefl owner** of the respive [share] este or intt in the hds & premes hby assured to wch he is or claims to be entled [or wch he has power to appt or dispose of], as hinbfe appears, & all other (if any) his este or intt thrin, [& the sd, *husbd & wife*, each of them conveying **as benefl owner** of the [share] este or intt in the same premes to wch the sd, *wife* (*i*) is or claims to be entled [*or*, has power to appt or to dispose of], as hinbfe appears], & all other, &c., do resply, accdg to their respive [shares] estes & intts [& powers], grt, &c. Various beneficial owners. Variation for married woman (*h*).

ix. The sd —— **as trees** [of the hinbfe recited indre of settlemt, *or*, "will"] *or*, "**as mtgees**," *or*, "**as psonal repves**," Trustees, mortgagees, &c. (*k*).

(*e*) This implies covenants for title, &c., by A. as to his life estate, and by B. as to the reversion in fee.

(*f*) This implies the usual covenants for title, &c., by the wife as to the acts of herself and her ancestors, &c., binding her separate estate, but no covenant by the husband. If the wife has power to dispose of the property as a *feme sole* under the Married Women's Property Act, 1882, or otherwise, the husband's concurrence is of course unnecessary, unless it is desired to obtain covenants from him, as in the next form.

(*g*) As to what covenants this implies, see p. 440.

(*h*) This implies covenants for title, &c., by each party limited to the share or interest conveyed by him, the husband's covenant also extending to the wife's share.

(*i*) If both the marriage and the acquisition of the property were before 1883, add here, "or the sd, *husbd*, in her rt"; see the Married Women's Property Act, 1882, ss. 1, 2, 5.

(*k*) This implies a covenant against incumbrances by each of the conveying parties as to his own acts, &c., only. There is of course no objec-

or, "exs," *or*, "ads of the sd X., deced," *or*, "as committee of the sd X.," *or*, "under the hinbfe recited order of, &c.," do resply [doth] hby grt, &c.

Directing party (*a*).

X. The sd —— as trees, *or as the case may be, see precedg form*, by the diron of the sd Z., directg as benefl owner, do hby grt, *or*, "appt," [& the sd Z., doth hby convey & confirm,] &c.

Consenting party (*b*).

XI. The sd —— as trees, &c., *or as the case may be, see form* IX., with the consent, *or*, "at the reqt," of the sd Z. [& for the ppose only of implying covts by the sd Z. for title & further assurce by the diron also of the sd Z., directg as benefl owner], do hby grt, *or*, "appt," & the sd Z. [as benefl owner], doth hby convey & confirm, &c.

Form in conveyance of various interests in freeholds held in undivided shares (*c*).

XII. The sd A., as benefl owner, as to one moiety of a moiety (being one eql fourth pt of the entirety) of the hds & premes hinafter descd & intd to be hby assured, doth hby grt, & the sd B. & C., as trees & as to the one eql —— pt of a moiety of the same premes to wch the sd D. is or claims to be benefly entled, at his reqt, do hby grt, & the sd D.,

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tion to referring to the settlement or other instrument under which the trust arises.

(*a*) This implies the same covenant as the preceding form, and in addition the usual covenants for title, &c., by Z., extending to the acts of the trustees. This or the next form may be used where a beneficiary joins in a conveyance by trustees to covenant for title. No additional covenants are implied by making Z. also convey "as beneficial owner;" see p. 440.

(*b*) This implies the same covenants as the last form, if the words of direction (which are bracketed) are inserted; or in lieu of this, Z. may be made to convey by way of confirmation "as beneficial owner," by inserting those words in the subsequent part of the clause, which would imply the same covenants by Z. except that they would not then extend to the acts of the trustees, and the covenant for right to convey would be faulty; see p. 440. The words of direction, unless qualified as above, may in this case be objectionable, and if the sale is by trustees, might imply a breach of trust, as they might be doing wrong in conveying by the direction of Z. If preferred, the statutory covenants may be incorporated in this case by a separate clause; see p. 452, form XIII.

(*c*) This implies covenants for title by A., D. and G. as to their respective shares; by K. as to the share conveyed by his direction; by L., binding her separate estate, and by M., her husband, as to her share; by

as benefl owner, as to such last-mentd —— pt of a moiety, doth hby grt & confirm, & the sd E. & F., as mtgees & as to one eql —— share of the premes, by the diron of the sd G., do hby grt, AND the sd G., as benefl owner, as to such last-mentd —— share, doth hby grt & confirm, AND the sd H., as tree as to one eql —— share of the premes, in exercise of the power for this ppose vested in him, under the hinbfe recited indre of, &c., & of every other power, &c., & with the consent (hby testified) & by the diron of the sd K., directg as benefl owner, doth hby appt & convey, & the sd L., as benefl owner, as to one other eql —— share of the premes (*d*), doth hby grt, & the sd M., as benefl owner, as to such last-mentd —— share, doth hby grt & confirm, & the sd N., as benefl owner, as to his este for life in one other eql —— share of the premes, & the sd O., as benefl owner, as to the revon [*or*, "remr" (*e*), *as the case may be*] of the same share after the dece of the sd N., do resply hby grt, AND the sd P., as to his sd anny, & to the intent that the usual statutory tree's covt agst incumbces shl be deemed to be hby implied on his pt, doth hby rele & all of them the sd respive conveying psons pties hto of the first —— pts as to all other, if any, the shares, estes, or intts in the premes wch they resply are entled to or have power to dispose of, do resply hby convey, appt, assure, & rele, &c., unto, &c.

N. as to his life estate in, and O. as to the reversion in fee of, their share; and covenants against incumbrances by B., C., and H., as trustees, and E. and F., as mortgagees, as to the shares conveyed by them; in the case of P., who releases a charge of an annuity, as the statutory words are not appropriate, the covenant against incumbrances is expressly incorporated. In the case of trustees and mortgagees, as they covenant as to their own acts only, there is not the same necessity as in the case of beneficial owners for defining the precise shares of interests conveyed by them though it is here done. As to the above mode of restricting the covenants, see p. 441.

(*d*) If both the marriage and the acquisition of the property were before 1882, add here, "& with the concurrce of the sd M., her husb." See the Married Women's Property Act, 1882, ss. 1, 2, and 5.

(*e*) As to the difference between reversion and remainder, see Co. Litt. 49*a*, 142*b*; Challis, R. P. 67.

Clause incorporating statutory covenants for title (*a*).

XIII. And it is hby decld that the same covts shl be deemed to be implied by these psnts on the pt of the sd Z. for the title to and further assurce of the sd premes hby assured, as if he [had joined in the assurce thof hby made, &] had been expd to assure the same **as benefl owner** [& the other pties makg or concurrg in such assurce had been expd so to do **by his diron**] (*b*).

Clause incorporating statutory covenant against incumbrances.

XIV. And it is hby decld that the same covt shl be deemed to be implied by these psnts on the pt of the sd Z., as if he had been expd to assure [rele] the premes hby assured as **free [mtgee]**.

Provisoes.

Proviso restricting liability under statutory covenants of joint tenants or tenants in common, &c. (*c*).

I. Provd always, & it is hby agrd, that the liability of each of them, the sd, *conveying pties, or,* "the sd pties hto of the first —— pts," resply & their respive hrs, exs, & ads under the covts for the title to & further assurce of the sd hds & premes hby assured wch are implied by law by reason of their resply joing in or confirmg the conveyce hby made **as benefl owners** shl extend to one eql undivided —— share only of the premes, *or,* "to the share, este, or intt of or in the premes to wch he is or claims to be entled, or wch he has or claims to have power to appt or dispose of as hinbfe recited, & not further," *or,* "the liability of the sd respive, *conveying pties, &c., &c., as above,* shl be limd as follows (that is to say), the sd A. shl be liable under such implied covts to the extent of one eql third pt of the premes & not further, the sd B. & C. (*d*), his wife shl be liable thrunder to the extent of one eql third pt of the premes & not further, &c., &c."

Proviso restricting

II. Provd always that, as respts the revon (*e*) [*or*, remr,

(*a*) See p. 438 *et seq.*

(*b*) See p. 439.

(*c*) See p. 441.

(*d*) The husband need not concur where the marriage or the acquisition of the property was after 1882; see note (*d*), last page.

(*e*) See note (*e*), last page.

as the case may be] expectant on the life este of the sd, *life tenant*, in the premes, & the title to & further assurce of the premes after his death, the covts by the sd, *life tenant*, wch are implied by law by reason of his being expd to convey as benefl owner shl not extend to the acts or defaults of any pson or psons other than or besides himself & his own hrs [exs or ads], & psons claimg through or in trust for him, them, or any of them. covenants by tenant for life (*f*).

III. PROVD ALWAYS, & it is hby decld that the covts of the sd A. for the title to and further assurce of the premes, wch are implied by reason of the sd B. being expd to convey by his diron shl not extend so as to render him liable in respt of the acts or defaults of the sd B., or of any pson claimg under him. Proviso restricting liability of directing party under statutory covenants.

IV. PROVD ALWAYS, & it is hby agrd, that the total amt recoverable from each of them the sd —— & ——, or from his hrs, exs, or ads, by way of damages under the respive covts by them the sd —— & —— resply hinbfe contd, *or*, "wch are implied by statute," for the title to & further assurce of the premes hby assured, shl not exceed the sum of £——, *or*, "the sevl sums hinafter mentd, namely, from the sd ——, his hrs, exs, or ads, the sum of £——, & from the sd ——, his hrs, exs, or ads, the sum of £——." Proviso limiting liability of covenantors to their shares of the purchase-money (*g*).

(*f*) This form is intended for a case where a tenant for life enters into covenants for title, express or statutory, on a sale by the trustees, and the covenants extend to the acts of a prior owner, *e.g.*, a testator or settlor; but if the covenants do not so extend the proviso is not required. The proviso is adapted also to a conveyance by a tenant for life under the Settled Land Act, 1882. It requires consideration whether a restriction of the statutory covenants may not in some cases be desirable to preclude such a case as *David* v. *Sabin* [1893], 1 Ch. 523.

(*g*) This mode of restricting the liability though sometimes adopted in practice, seems scarcely defensible, the proper mode being to restrict the liability to the respective interests of the covenantors in the estate; see 2 Dart, V. & P. 895.

COVENANTS FOR PRODUCTION OF DEEDS (*a*).

I.

FULL *form of* COVENANT *by one* VENDOR *with one* PURCHASER *for* PRODUCTION *of deeds; with proviso for* SUBSTITUTED COVENANT *on the vendor* PARTING WITH *the deeds.* VARIATIONS *for* LEASEHOLDS *or* PERSONALTY, *for a* CONVEYANCE *by or to* JOINT TENANTS *or* TENANTS IN COMMON, *and where the covenant for production is contained in a* SEPARATE DEED.

To produce deeds.

THE sd, *vendor*, doth hby, for himself, his hrs, exs, ads, & assns, covt with the sd, *pchaser*[*s*] *or grtee*[*s*] *to uses*, his

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Statutory covenants for production and custody of title deeds.

(*a*) The Conv. Act, 1881, s. 9, contains provisions intended to obviate the insertion of the full covenants for production and safe custody of documents by substituting very short forms of:—1. An acknowledgment of the right to production and delivery of copies; and, 2. An undertaking for safe custody; to which an operation is given similar to that of the old form of covenant by trustees or mortgagees (Form II.), in respect of the personal liability ceasing on the covenantor parting with the deeds, but the obligation attaching on the deeds against the holder for the time being; whereas the liability under the old form of covenant of a beneficial owner continues after he parts with the deeds unless there is a proviso for cesser of the liability on his procuring a substituted covenant (see Form I.), and this is procured; which, however, it seldom was on account of the trouble and expense. The Act has led to an assimilation of the practice in the two cases.

Operation of statutory covenant in case of trustees and mortgagees.

The statutory covenant differs from the old trustees' and mortgagees' covenant in this, that the latter imposes a liability only while the covenantors have the "actual custody" of the deeds, but, under the statute, they are liable while having the "custody or control" of them; this is of no importance as regards the covenant for production, but it renders the statutory undertaking for safe custody more onerous than the old express covenant by making the covenantors liable for the loss of the

[their] hrs & assns, *in a convce in common, add*, "& as a separate covt with each of them, his hrs & assns" (*b*), that he,

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deeds through the defaults of their agents, as well as their own personal defaults; and the undertaking if given by trustees or mortgagees or other fiduciary owners, should be qualified by the proviso, *infra*, p. 459; but it is the very general and is considered to be the better practice to omit it altogether; see *Re Agg-Gardner*, 25 Ch. D. 600. A liability of this kind may attach to deeds delivered to trustees or mortgagees by reason of an undertaking for safe custody given by a previous possessor, but this cannot be avoided. As to the liability of a mortgagee to pay compensation to the mortgagor for the loss of the deeds, see *Hornby* v. *Matcham*, 16 Sim. 325; *Brown* v. *Sewell*, 11 Hare, 49; *James* v. *Rumsey*, 11 Ch. D. 398. A mortgagee is now bound to produce the deeds to any person interested in the equity of redemption: see the Conv. Act, 1881, s. 16.

Devolution of benefit of acknowledgment and undertaking.

The benefit of an acknowledgment (by sub-s. 3) goes to any person (other than a lessee at a rent), claiming under the person to whom it is given. There is no corresponding provision as to the devolution of the benefit of an undertaking for safe custody; but it would no doubt by implication be held to go with the acknowledgment.

As to conveyance by appointment.

In the case of a conveyance by appointment direct to the uses of a settlement or will, although no doubt the benefit of the implied statutory covenants for title would pass according to the intention, the ordinary form of statutory acknowledgment as to muniments could not be used for want of a grantee to uses. It would obviate this if the vendor, although he has no estate, conveys (see Form IV., p. 474, and note (*c*) thereto) by appointment, and also, by a separate clause, by grant to a grantee to uses, to whom the acknowledgment might be made, so as (it is conceived), to be effectual, although the estate would in fact pass by the appointment and not by the grant.

The Act applies whether the documents relate to real or personal estate.

The statutory operation of the acknowledgment or undertaking is to be subject to any express provisions contained in it (sub-ss. 12 and 13): it may therefore be modified.

Form of acknowledgment.

It is important to notice that sub-s. 1 appears to require that the acknowledgment, in order to be effectual, should be of the right not only to production, but also to delivery of copies (and see the form in Schedule IV., 3), so that without the latter words it would fail of any statutory effect.

(*b*) For leaseholds or personalty substitute throughout the covenant for "hrs," "exs, ads," in the case both of the covenantor and covenantee. The covenantor is made to covenant for his "assns" as the burden of the covenant is to run with the deeds; and the words "hrs, exs, & ads," are therefore also inserted, though they are unnecessary; see p. 2, note.

the sd, *vendor*, his hrs or assns (*a*), will at all times hrafter, unless prevented by fire or other inevitable accident, upon

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Acknowledgment does not include undertaking.

A mere acknowledgment does not include a covenant for safe custody (sub-s. 6); if this is intended, an undertaking must also be given under sub-s. 9.

The documents must be in the possession of the covenantor.

The statutory covenant only applies to documents "in the possession" of and "retained" by the covenantor (see sub-ss. 1 and 9); the fact that they are in his possession should therefore be stated in the acknowledgment or introductory recital. Of course the retaining need be only momentary. Occasionally a vendor covenants for production of documents in the hands of third parties, who cannot or will not give a covenant or acknowledgment, *e.g.*, mortgagees, or the trustees of a settlement; in that case an express covenant in the old form must be given, as the statute would not apply, even though the documents should afterwards come into the possession of the vendor; the doctrine of estoppel not being applicable to such a case. The statutory form of acknowledgment and undertaking if given in such a case would operate according to its tenor independently of the statute, and would probably create a more onerous liability than the ordinary express or statutory covenant.

As to the right to possession of deeds, see 33 Sol. J. 655, 670, 683, 695, 706, 714.

Stamp.

An acknowledgment or undertaking need not be under seal; if under hand only it will require only a 6*d.* agreement stamp.

Expenses.

As to expenses, see V. & P. Act, 1874, s. 2 (4), 1 Dart, V. & P. 161.

Right of purchaser to express covenant.

An acknowledgment or undertaking under the Act is to satisfy any liability to give a covenant for production or safe custody respectively (sub-ss. 8 and 11); so that a purchaser cannot, as it seems, insist on the ordinary express covenant, although stipulated for in the contract. But this provision cannot apply where the deeds are not in the covenantor's custody, as the acknowledgment would not in that case have the intended statutory effect.

Express covenant now unnecessary.

Except in the case mentioned above, and where the property is situate abroad, the statutory provisions on this subject entirely supersede the necessity for the insertion of the full covenants for production, &c., and their employment is now practically universal in the case of absolute owners as well as trustees and mortgagees (with the omission or qualification in the case of the latter of the undertaking for safe custody); but the ordinary forms of such covenants are here given for comparison with the statutory provisions, and for use in the exceptional cases before mentioned.

(*a*) If the vendors are joint tenants, or tenants in common, the covenant will commence:—"The sd, *vendors*, do hby, for themselves & their hrs, &c., [*if tenants in common, add*, & each of them doth hby, for himself, his hrs, exs, ads & assns], covt, &c., that they, the sd, *vendors*, their [*if tenants in common*, respive] hrs [exs, ads] or assns will, &c." The rest of the covenant will

every reasble reqt, & at the cost of the sd, *pchaser*[*s*] *or grtee*[*s*] *to uses*, his [their] (*b*) hrs or assns, or any of them, or any pson or psons havg or claimg through him or them any este or intt at law or in equity in the premes hby assured (*c*), or any pt thof, produce or cause to be produced [in England or Wales, but not elsewhere] to him or them, or his or their solor or agent, or such other pson or psons as he or they shl direct, or in the course of any judicial or other pcdgs, or orwise as occasion shl require, all or any of the deeds & writgs mentd in the schdle hrunder written, *or*, "the sd recited indres of, &c.," *or*, "an indre dated, &c., & expd to be made, &c., & anor indre dated, &c., & expd, &c." [& all other deeds, evidces, & writgs (if any), other than doets of record (*d*), now in the custody or power of the sd, *vendor*, relatg to the premes hby assured (*e*), or any pt thof] (*f*), for the proof, defence, & support of the title & posson of the sd, *pchaser*[*s*]

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be as above. Where one of the vendors is a married woman, she may covenant so as to bind her separate estate (see p. 440), or her husband may covenant in her stead.

(*b*) If the purchasers are tenants in common, insert here and subsequently in the corresponding place, "respive."

(*c*) Where the covenant for production is contained in a separate deed, substitute here, and subsequently, for "hby assured," the words, "comprd in & assured by the hinbfe recited indre of even date hwith."

(*d*) As to documents of record, see 1 Dart, V. & P., p. 160.

(*e*) See p. 456, note.

(*f*) The part in brackets is not usual. Where a purchaser is buying the whole of the vendor's estate, he is entitled to have all the deeds in the vendor's possession handed over; but where he is buying only a part, he is entitled to include in the covenant for production only those abstracted (so decided by Stirling, J., in chambers, in a case of *Re Guest and Worth*, on 20th May, 1889, and see *Cooper* v. *Emery*, 1 Ph. 388). Otherwise the covenant for production might lead to the disclosure of defects in the vendor's title affecting the other property retained by him which it may have been the object of the condition limiting the commencement of the title to prevent. Mere copies of documents (whether plain, or attested, or office), are not included; nor is it the practice to include probates of wills or letters of administration. As to documents of record generally, see 1 Dart, V. & P. 160, 765. What deeds should be included in covenant.

or grtee[*s*] *to uses*, his [their] hrs or assns, or any such other pson or psons as afsd to the premes hby assured, or any pt thof, & will permit the same to be examined, inspected, or given in evidce ; And will also at the like reqt & cost of the sd, *pchaser*[*s*] *or grtee*[*s*] *to uses*, his [their] hrs or assns, or any such other pson or psons as afsd, make & furnish, or cause to be made & furnished to him or them such true, attested, or other copies or abstracts of or extracts from the same deeds & writgs resply, *or*, "indres," as he or they may require ; And will keep the same deeds & writgs, *or*, "indres," safe, whole, & uninjured, fire or other inevitable accident only excepted ; Provd always, & it is hby decld, that in case the sd deeds & writgs, *or*, "indres," hinbfe covted to be produced, or any of them, shl at any time hrafter be delivered by the holder or holders thof to any other pson or psons lfully entled to the custody thof, & such pson or psons shl thrupon enter into with, & deliver to the pson or psons for the time being entled to the benefit of the covt for prodon hinbfe contd, & witht expse to him or them, a covt for the prodon & furnishg copies & safe custody of the deeds & writgs, *or*, "indres," wch shl have been so delivered up, similar to the covt hinbfe contd, then & in such case the sd last-mentd covt shl thenceforth be null & void, so far as regards the deeds & writgs, *or*, "indres," to wch the sd substituted covt shl relate.

Furnish copies.

For safe custody.

Proviso for substituted covenant.

II.

Full *form of* Covenant *by* Trustees *or* Mortgagees *or other fiduciary owners for* Production *of deeds* (*a*).

The sd, *trees or mtgees*, as to their own respive acts & defaults only, & not those of each other, & so as to bind them-

(*a*) For variations, see No. iv.

selves & their repves resply only while havg the actual custody of the deeds & writgs hby covted to be produced, & so far as practicable, to bind such deeds & writgs into whosesr hands the same may come, but not so as to incur any liability in relon thto further or orwise, do hby for themselves resply & their respive hrs, exs, ads, & assns, covt with the sd, *pchaser or grtee to uses*, his hrs, *or*, "exs, ads," & assns, that they, the sd, *trees or mtgees*, or some or one of them, their or some or one of their, hrs, *or*, "exs, ads," or assns, will at all times hrafter, &c. [*as in* No. I. (*b*), *omittg the provo for substituted covt.*]

III.

STATUTORY ACKNOWLEDGMENT *by a vendor to a purchaser* (*c*) *of the right to* PRODUCTION *of muniments, with* UNDERTAKING *for* SAFE CUSTODY. VARIATIONS *where vendors are* TRUSTEES *or* MORTGAGEES.

THE SD, *vendor*, hby acknowes the rt of the sd, *pchaser*, to the prodon & delivery of copies (*d*) of the docts mentd in the schdle hto (wch are now in the posson (*e*) of the sd, *vendor*); AND hby (*f*) undertakes with the sd, *pchaser*, for the safe custody of the same docts. Acknowledgment of right to production. Undertaking for safe custody.

(*b*) As to the covenant by trustees or mortgagees extending to the safe custody of the deeds, see p. 454, note.

(*c*) For several vendors or purchasers (whether joint tenants or tenants in common) no other alteration is necessary than the substitution of the plural.

(*d*) As to the wording, see above, p. 455, note.

(*e*) See p. 456, note.

(*f*) In the case of trustees or mortgagees or other fiduciary vendors, the undertaking for safe custody should be omitted, or it may be qualified by the following proviso, which, however, is not usual (see pp. 454—455):—

"But so that each of them & his hrs, exs, & ads & every other pson for the time being bound by this undertakg shl Qualification of undertaking

IV.

STATUTORY ACKNOWLEDGMENT *of the right to* PRODUCTION *of* SEVERAL SETS *of deeds in the custody of different persons, some being* TRUSTEES *or* MORTGAGEES, *with undertaking for* SAFE CUSTODY (*a*).

Acknowledgment of right to production.

THE sd A., as to the docts in the first pt of the schdle hto wch are in his posson, & the sd B., as to the docts in the second pt of the sd schdle wch are in his posson, & the sd C. & D. (*trees or mtgees*), as to the docts in the second pt of the sd schdle wch are in their posson, hby resply acknowe the rt of the sd, *pchaser*, to the prodon & delivery of copies of the docts mentd in the sd schdle hto: AND the sd A., as to the docts in the first pt of the sd schdle, the sd B., as to the docts in the second pt of the sd schdle, hby resply undertake with the sd, *pchaser*, for the safe custody of the docts mentd in the first & second pts of the sd schdle.

Undertaking for safe custody (*b*).

V.

ADDITION *to express or statutory* COVENANT FOR PRODUCTION *where the deeds are to be* DELIVERED *to the purchaser as soon as the* OTHER PROPERTY *to which they relate has been sold.*

AND FURTHER, *covt by vendor with pchaser*, that when all the other ppty to wch the sd munimts & writgs resply relate

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in case of trustees or mortgagees.

be liable under this undertakg in respt of his or their own psonal acts & defaults only & not for those of any solor or agent who may have the custody of the sd respive docts."

(*a*) See above, p. 455.

(*b*) The undertaking for safe custody should not be given by C. & D. or it should be qualified; see last page, note (*f*).

shl have been sold & conveyed to the pchaser or pchasers thof, such respive munimts & writgs shl at the cost of the sd, *pchaser*, his hrs or assns, & upon his or their at his or their own cost extg & deliverg to such pchaser or respive pchasers a pper acknowemt for the prodon & furnishg copies & for undertakg safe custody thof, be delivered to the sd, *pchaser*, his hrs or assns.

MISCELLANEOUS CLAUSES.

Covenant by purchaser to pay rent, and perform covenants of lease, with variations (*c*).

1. The sd, *pchaser*, doth hby for himself, his hrs, exs, ads, & assns (*d*), covt with the sd, *vendor*, his exs & ads [*vendors*, their exs, &c., & as a separate covt with each of them, his exs, &c.], that he, the sd, *pchaser*, his exs, ads, or assns, will henceforth durg the continuce of the sd term pay the rent (*e*) reserved by & pform & observe the covts & agrmts

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As to covenant to pay rent and perform covenants of lease.

(*c*) The purchaser of a leasehold is bound to enter into this covenant if the vendor is under any continuing liability after the assignment, whether on a sale by the original lessee, or his representatives, or by an assignee who has entered into a similar covenant of indemnity, but not otherwise, *e.g.*, on a sale by a trustee in bankruptcy, 1 Dart, V. & P. 629; but see above, p. 271, note (*d*). A trustee in bankruptcy, however, who is prevented from disclaiming the lease by a mortgagee, to whom he accordingly assigns it, is entitled to indemnity; *Ex parte Buxton, In re Müller*, 15 Ch. D. 289. Where part only of the demised premises is assigned at an apportioned rent, the covenant should be entered into with the vendor, "his exs, ads, & assns," and the words in note (*e*), and p. 462, notes (*a*), (*b*), and (*c*) will be inserted.

As to burden of covenant running with the land.

(*d*) The purchaser should expressly covenant for his "assigns" (*Doughty* v. *Bowman*, 11 Q. B. 444), as it is intended that the burden of the covenant should run with the land, and the words "hrs, exs, & ads," although superfluous, are therefore also inserted. As to the remedy of the original lessee against subsequent assignees in respect of breaches of covenant independently of contract, see *Moule* v. *Garrett*, L. R. 5 Ex. 132, L. R. 7 Ex. 101.

(*e*) "The yrly rent of £——, being the sd apportioned pt of the sd yrly rent of £——."

on the pt of the lessee & condons contd in the sd indre of lease (*a*), & will at all times keep the sd, *vendor*, his [*vendors*, their respive] hrs, exs & ads [*if the vendors are the exs or ads of a deced lessee, add*, & the este & effects of the sd X., deced] (*b*) effectually indemnified agst all actions & pcdgs, costs, damages, expses, claims, & demands whatsr by reason or on acct of the non-paymt of the sd rent, or any pt thof, or the breach, non-pformce, or non-observce of the sd covts, agrmts, & condons or any of them (*c*).

The same for several leases by two or more purchasers (*d*).

II. [*For jt tenants*, And the sd, *pchasers*, do hby for themselves, their hrs, exs, ads, & assns] [*for tenants in common*, And each of them, the sd, *pchasers*, so as to be liable only in respt of one eql undivided —— share of the sd premes, doth hby for himself, his hrs, exs, ads, & assns] covt with the sd, *vendor*, his exs & ads, that they, the sd, *pchasers*, their hrs, exs, ads, or assns, will henceforth, durg the continuce of the sd respive terms, pay the respive rents

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(*a*) "And henceforth to be pd, pformed, & observed in respt of such of the sd premes thby demised as are hby assned."

(*b*) "And such of the sd premes demised by the sd indre of lease as are retained by the sd, *vendor or vendors*."

(*c*) "In respt of such of the premes demised by the sd indre of lease as are hby assned."

(*d*) See notes to last form. Trustees purchasing leaseholds may have to enter into this covenant, which is somewhat onerous, as the obligation would remain after they have parted with the property. Occasionally the tenant for life is willing, though he cannot be required, to covenant for their indemnity, as follows:—

Covenant by tenant for life to indemnify trustees.

"The sd, *tenant for life*, doth hby covt with the sd, *trees*, their exs & ads jtly & sevlly, that he, the sd, *tenant for life*, his hrs, exs, or ads, will at all times keep the sd, *trees*, resply & their respive hrs, exs, & ads effectually indemnified agst all actions, pcdgs, costs, damages, claims, & demands in respt of the psonal liability incurred by them under the covt hinbfe contd for paymt of the rent under, & pformce & observce of the covts & condons of the sd lease."

reserved by, & pform & observe the respive covts & agrmts on the pt of the respive lessees & condons contd in the sd respive indres of lease, & will at all times keep, &c., *as in last form, for indemnity in respt of,* "the sd respive rents" & "the sd respive covts, &c."

Covenant by purchaser of equity of redemption to pay and indemnify the vendor against mortgage debt (*e*).

III. And the sd, *pchaser*, doth hby covt with the sd, *vendor*, his exs & ads, that he, the sd, *pchaser*, his hrs, exs, ads, or assns, will pay to the sd, *mtgee*, his exs, ads, or assns, [on such paymt being lawfully demanded] (*f*) the sd ppal sum of £—— so owing on the secy of the sd recited indre of mtge as afsd, & the intt now & henceforth to become due in respt thof, & will at all times keep the sd, *vendor*, his hrs, exs, & ads, effectually indemnified agst the same & every pt thof, & all actions, pcdgs, costs, chges, claims, & demands whatsr in respt thof; Provd always that if the sd, *vendor*, his hrs, exs, or ads shl be called upon to pay, & shl pay the sd ppal sum of £—— & intt or any pt thof resply, the moy so pd by him or them, with intt thron at the rate, &c., from the time of paymt thof, shl be & the same is hby made a chge upon the sd hds & premes hby assured for the benefit of the pson or psons so paying the same.

Covenant by vendor for payment of succession duty (*g*).

IV. The sd, *vendor*, doth hby covt with the sd, *pchaser*, his hrs [*or*, exs, ads] & assns, that he the sd, *vendor*, his hrs, exs, or ads, will, when & as soon as any succession duty shl become payable in respt of the premes hby assured

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(*e*) As to the right of the vendor to indemnity, apart from contract, see *Waring* v. *Ward*, 7 Ves. 332, 337. As to the rights of the parties generally, in case of an assignment of an equity of redemption, see *Kinnaird* v. *Trollope*, 39 Ch. D. 636.

(*f*) The object of the words in brackets is to preclude the vendor from requiring the purchaser to pay off the mortgage so long as he is kept indemnified; see 2 Dav. Prec. Pt. 1, 453, note (*d*). This may, if preferred, be effected by adding the following at the end of the covenant:—

Vendor not to require payment of debt if indemnified.

"Provd always that the sd, *vendor*, his hrs, exs, or ads, shl not be entld to require the sd ppal sum & intt, or any pt thof to be pd off, in case & so long as he & they shl be kept indemnified in respt thof as afsd."

Succession duty.

(*g*) Where the purchase is of the fee simple in possession, the vendor

upon the death of the sd A., pay & dischge the same, & will at all times keep the sd, *pchaser*, his hrs, exs, ads, & assns, effectually indemnified, &c., *as in last form*.

Covenant by purchaser to pay succession or legacy duty in respect of reversion (*a*).

v. THE sd, *pchaser*, doth hby covt with the sd, *vendor*, his exs & ads, that he the sd, *pchaser*, his hrs [*or*, exs, ads] or assns, will when & as soon as any succession [legacy] duty shl become payable in respt of the premes hby assured upon the death of the sd, *tenant for life*, pay & dischge the same, & will at all times keep the sd, *vendor*, his hrs, exs, & ads, effectually indemnified, &c., *as in form* III.

Covenant by purchaser to indemnify vendor against restrictive covenants in former conveyance (*b*).

VI. THE sd, *pchaser*, doth hby covt with the sd, *vendor*, his exs, & ads, that he the sd, *pchaser*, his hrs [*or*, exs, ads] & assns, will at all times hrafter duly observe & pform the covts by the sd, *vendor*, & restrictive provons in the sd indre of, &c., contd in relon to the premes hby assured, & will at all times keep the sd, *vendor*, his hrs, exs, & ads, effectually indemnified agst all actions, &c., *see form* III. in respt of the sd covts & restrictive provons or any of them.

Covenant by purchaser to pay and indemnify vendor against rent-charge.

VII. THE sd, *pchaser*, doth hby covt with the sd, *vendor*, his hrs, exs, ads, & assns, that he the sd, *pchaser*, his hrs & assns, will henceforth pay the sd rentchge of £——, reserved by the sd indre of, &c., & pform & observe all the covts on the pt of the sd, *vendors*, & condons in the same indre contd in respt of the hds hby assured, & will at all times keep the sd, *vendor*, his hrs, exs, ads, & assns effectually indemnified agst all actions, pcdgs, costs, damages,

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has, as between himself and the purchaser, to pay all succession duty which may become payable under any existing disposition of the property; but where a reversionary interest is sold, the purchaser has, in the absence of special contract, to pay the succession duty arising on its falling into possession. *Cooper* v. *Trewby*, 28 Beav. 194: approved in *Re Langham*, 60 L. J. Ch. 110, 39 W. R. 156 (C. A.); Hanson, 332. See now the provisions of the Customs, &c. Act, 1889 (52 Vict. c. 7), ss. 12—15, for the relief of purchasers in respect of unpaid duty.

Estate duty.

In Forms IV. and V. the covenant should extend to the "estate duty" imposed by the last-mentioned Act, s. 6, where there is a possibility of such duty becoming chargeable.

(*a*) See last note.

(*b*) As to vendor's rights apart from contract, see 1 Dart, V. & P., 631.

expses, claims, & demands whatsr in respt of the same rent-chge, covts, & condons.

Covenant by purchaser to pay debts, on assignment of business.

VIII. THE sd, *pchaser*, doth hby covt with the sd, *vendor*, his hrs, exs, & ads, that he the sd, *pchaser*, his exs or ads, will in due course pay & dischge all the debts & liabilities of the sd business wch were subsistg on the —— day of ——, 18—, or have since been incurred as appearg in the books of the sd business & wch now remain outstandg or undischged, & will at all times hrafter effectually keep indemnified the sd, *vendor*, his hrs, exs, & ads, agst all such debts & liabilities as afsd, & all actions, pcdgs, costs, damages, & expses in respt thof.

Covenant that life policy is subsisting.

IX. THAT notwg anything by him the sd, *vendor*, done, omitted, or knowingly suffered the sd policy is now a valid subsistg policy for the sd sum of £—— & for all bonuses & addons, if any, wch have been added thto.

To enable purchaser to insure vendor's life.

X. THAT he, the sd, *vendor*, will at any time hrafter [durg the jt lives of himself & K.], at the reqt & at the expse of the sd, *pchaser*, his exs, ads, or assns, appear at any life assurce office or offices in London or Westminster, or bfe the agent or agents of any such office or offices in the coy where he, the sd, *vendor*, may happen to be resident & actually be, & then & there truly answer such questions & make such declons as shl or may be asked or required touchg or concerng his age & state of health, & do all other necy acts in order to enable the sd, *pchaser*, his exs, ads, or assns, at his or their expse, to effect a policy or policies of assurce on the life of him, the sd, *vendor*.

Not to vitiate policy.

Variation where the policy is not yet effected

XI. THAT he, the sd, *vendor*, will not at any time do or knowgly omit or suffer anything [other than the omission to pay the premiums, wch are to be pd by the sd, *pchaser*, his exs, ads, or assns], whby the sd policy [any policy wch may be effected as hinbfe provd] may become void or voidable, or whby the sd, *pchaser*, his exs, ads or assns, may be prevented from receivg the moys thby assured, or any bonus or addon thto or any pt thof resply.

XII. THAT if the sd, *vendor*, shl at any time do or

To pay increased premiums if required.

knowgly omit or suffer anything whby any addonal premium or paymt shl become payable in respt of the sd policy, then he, the sd, *vendor*, will from time to time thrafter pay to the sd, *pchaser*, his exs, ads, or assns, such sum or sums of moy as shl become payable as an addonal premium or paymt for keepg the sd policy on foot, one week at least bfe the first day on wch such addonal premium or paymt shl become payable to the assurce office in respt of such policy.

To give certain notices.

XIII. THAT he, the sd, *vendor*, will from time to time give to the sd, *pchaser*, his exs, ads, or assns, at least —— days' notice in writg of his inton to do, omit, or suffer anything whby such addonal premium or paymt as afsd will become payable, or to change his abode, & will forthwith, on being required so to do, give to him or them such informon as to his abode or intd change of abode as may be required, & that the exs or ads of the sd, *vendor*, shl within —— days after his death send informon thof to the sd, *pchaser*, his exs, ads, or assns, by lre sent through the post addressed to him or them at his or their usual or last known place of abode in England.

Commencement of restrictive covenants by purchaser as to building or other matters(*a*).

XIV. THE sd, *pchaser*, doth hby, for himself, his hrs, exs, ads, & assns [The sd, *pchasers*, do hby, for themselves resply & their respive hrs, exs, ads, & assns jtly & sevlly] [& to the intent & so as to bind not only himself [themselves] psonally but also (so far as practicable) all psons claiming title under him [them resply] to, *or*, "all future owners & tenants of," the lands & premes hby assured or any pt thof, & to bind such lands & premes into whosesr hands the same may come (*b*)], covt with the sd,

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(*a*) See the forms of restrictive stipulations in CONDITIONS OF SALE, pp. 314—322.

(*b*) The part in this bracket may be omitted if brevity is desired. If it is wished to exclude or limit the personal liability of the purchaser or purchasers, the following may be substituted for it:—

Clause limiting

"To the intent & so that the covts hinafter contd shl be bindg on the sd lands & premes hby assured, into whosesr

vendor, his [*vendors*, their] hrs & assns, the owner or owners for the time being of the lands coloured —— on the sd plan hrunto annexed (*c*), [& as a separate covt with each of them, the sd, *vendors*, his hrs & assns] in mner follg, that &c., *see* CONDONS OF SALE, p. 311 *et seq.*, *or*, "that the sd, *pchaser*, his [*pchasers*, their respive] hrs & assns, will at all times hrafter observe & pform the stipulons & regulons in relon to the sd lands & premes hby assured wch are contd in the schdle hto."

Purchaser to give notice of covenants (*d*).

XV. THAT for the ppose of makg the covts of the sd A. [& B resply] hinbfe contd to run with & bind the sd hds & premes, the sd A., his hrs & assns, [the sd. A. & B., resply, & their respive hrs & assns] will upon every convce, lease, or other assurce of the premes or any pt thof, give to the pchaser, lessee, or grtee express notice of such covts.

Power of re-entry in conveyance in fee on non-payment of rent-charge or breach of covenants (*e*).

XVI. PROVD always, & these psnts are exted on this express condon, that if the sd, *pchaser*, his hrs or assns, shl at any time [durg the lives or life of the pties hto, *or*, "of Her Majesty the Queen & her descendants now livg," or of the survors or survor of them or within twenty-one yrs after the dece of the last survor of them] make default in paymt of the sd yrly rent of £—— within thirty days after the same shl have become due (whether demanded or not), or shl at any time [within the sd period of lives in being & 21 yrs after] make default in pformg or observg any of the covts & stipulons (whether negative or affirmative) hinbfe contd & on his or their pt to be

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personal liability of purchaser.

hands the same may come, but not so as to be psonally liable in damages for any breach thof [after he, the sd, *pchaser* [they, the sd, *pchasers*, resply] shl have parted with the premes]."

As to how far restrictive covenants can be made binding on the assigns of the covenantor, see p. 334, note.

(*c*) See p. 311, note.

(*d*) Notice of the covenants should if possible be endorsed on one or more of the covenantor's title deeds; see p. 49, note.

(*e*) See above, p. 334, note, and especially p. 335, as to restricting the power to lives in being and 21 years after.

pformed & observed, then, & in such case, it shl be lawful for the sd, *vendor*, his hrs or assns [within the sd period of lives in being & 21 yrs after], into & upon the premes hby assured, or any pt thof, in the name of the whole, to enter & to do thron any act wch may be requisite specifically to pform the covts by the sd, *pchaser*, hinbfe contd, [includg the pullg down of houses, bldgs, or other erections], & to remain in posson & rece the rents & profits thof until all the sd covts & stipulons shl have been duly pformed & observed, & any breach thof made good, & until the sd, *pchaser*, his hrs or assns, shl have pd to the sd, *vendor*, his hrs or assns, all rent in arrear & all costs, chges, & expses pperly incurred by him or them in or about the doing of any such act as afsd, or occasd by any such nonpaymt or breach of covt as afsd, togr with intt thron at the rate of £5 p.c. p.a., or until the same shl have been satisfied out of the rents & profits of the premes: PROVD NEVS that such rt of entry & other powers & remedies afsd shl not be exercised or put into force by the sd, *vendor*, his hrs or assns, unless & until he or they shl have given to the sd, *pchaser*, his hrs or assns, or left upon the premes hby assured, notice in writg to make good such default, & all costs, damages, & expses incurred as afsd, & the sd, *pchaser*, his hrs or assns, shl fail so to do for one calr month after such notice.

Proviso.

Power of attorney in assignment of chose in action (*a*).

XVII. TOGR with power for the sd, *pchaser*, his exs, ads, or assns, at his or their own costs, in the name or names, & as the atty or attys of the sd, *vendor*, his exs, or ads, or orwise, to demand, sue for, recover, & rece & give effectual rects & dischges for the sd —— & premes hby assned, or any pt or pts thof, & for any of such pposes to appt, a substitute or substitutes, the sd, *vendor*, his exs & ads being kept indemnified by the sd, *pchaser*, his exs, ads, or assns, from all costs & expses occasd by such use of his or their name or names.

(*a*) See above, p. 124, note.

PRECEDENTS (*b*).

I.

CONVEYANCE *of* FREEHOLDS *by a vendor seised in* FEE *to a purchaser, with* RECITALS (*c*). PREC. I.

THIS INDRE, made the —— day of —— betn A., *vendor*, of, &c., of the one pt, & B., *pchaser*, of, &c., of the other pt: WHAS the sd A. is seised of the hds hinafter desed & intd to be (*d*) hby assured for an este in fee simple in posson free from incumbces, & has agrd with the sd B. for the sale thof to him for the sum of £——: [AND WHAS the docts of title mentd in the schdle hto, wch are in the posson of the sd A., relate as well to the hds hby assured as to other ppty of the sd A., & it has been agrd that he shl retain the sd docts & give such acknowemt & undertakg in

Recitals.

Seisin.

As to muniments.

(*b*) The Conv. Act, 1881, contains two schedules of forms of deeds, one (schedule 3) of mortgages, transfers, and reconveyances, having a special statutory operation; the other (schedule 4) being merely sample forms which are made sufficient in form and expression (s. 57), but in no way obligatory, save as regards the special wording required to imply the statutory covenants for title, &c., and production of deeds (see p. 441, and p. 454, note). Although deeds are much shortened by omitting the covenants for title and other common clauses which are supplied by the Act, there is little to be gained in point of brevity by adopting the language of the statutory forms in minor respects; and the customary language with some abbreviations is for the most part retained in these Precedents.

As to use of statutory forms of conveyance.

(*c*) It is usual in this case, and it is not uncommon in less simple cases, to dispense with recitals; see the next precedent and other instances *infra*; but recitals are sometimes inserted, with the object of securing prospectively the benefit of their becoming evidence in support of the title under the V. & P. Act, 1874, s. 2, or otherwise; see p. 384, note.

As to omitting recitals.

(*d*) The words "hinafter desed & intd to be," may for brevity be omitted.

PREC. I.

relon thto as is hinafter contd (*a*).] NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, & in conson of the sum of £—— now (*b*) pd by the sd B. to the sd A. (the rect whof is hby acknowed), the sd A., as benefl owner (*c*) doth hby grt (*d*) unto the sd B., *pcels, see* p. 415 *et seq., referrg, if need be, to a schdle or plan, or both* (*e*), To HOLD the same UNTO & TO THE USE of the sd B., his hrs & assns (*f*), subjt to an indre of lease dated, &c., & expd, &c.,

Witnesseth.

Grant.

(*a*) This introductory recital as to muniments is very often dispensed with.

(*b*) Or if preferred say, "upon or bfe the exon hrof." It is unnecessary to notice that part of the money was paid, if it was so, as a deposit on the contract.

As to implied statutory covenants for title.

(*c*) The words "as benefl owner" are inserted to raise the implied statutory covenants for title by the person conveying in that capacity; see p. 438 *et seq.* It is assumed in all the precedents that the statutory covenants by beneficial owners for title, and by fiduciary owners against incumbrances, will be relied on in all cases to which they are applicable. For the forms of express covenants for title, see p. 442 *et seq.*, and for the forms of covenants against incumbrances by fiduciary owners, see pp. 446, 447. The express covenants if inserted would be placed at or near the end of the deed; the special statutory words "as benefl owner" or "as tree" &c. (see p. 438 *et seq.*) being in that case of course omitted. The special words in question are printed throughout these Precedents in distinctive type, so as to avoid the necessity, except in special cases, for calling attention to them by a note.

(*d*) The word "convey" may be used in lieu of "grt," being now equally appropriate (see above, p. 441), and being used in the forms in the schedules to the Conv. Act, 1881.

(*e*) The general words, and "all the estate" clause, are omitted, in reliance on the Conv. Act, 1881, sub-s. 6 and 63; see p. 430, note, p. 432, note.

(*f*) As to the use of the words "in fee simple" in lieu of "hrs & assns," for limiting an estate in fee, see the Conv. Act, 1881, s. 51, and the forms in the schedules to the Act; and above, p. 432, note.

As to inserting declaration against dower.

It is occasionally the wish of a purchaser whose wife is sufficiently provided for by settlement or otherwise, to exclude her from dower in the event of his dying intestate, by the insertion of the following clause; but having regard to the Dower Act, 3 & 4 W. IV. c. 105, such a clause should not be inserted unless there is special reason:—

"And the sd, *pchaser*, doth hby declare that any wife whom he may leave survivg him, shl not be entled to dower out of the sd hds & premes hby conveyed."

whby the premes were demised to, &c., for a term of —— yrs, at the yrly rent of £—— (*g*): [And the sd A. hby acknowes the rt of the sd B. to prodon & delivery of copies of the docts of title in the posson of him, the sd A., wch are mentd in the schdle hto, & hby undertakes with him for the safe custody of such docts (*h*)]: In wits whof the sd pties hto have hrunto set their respive hands & seals the day & yr first above written (*i*).

PREC. I. Acknowledgment, &c., as to muniments.

[The first schdle above refd to.]

[*Schdle of pcels.*]

[The second schdle above refd to.]

[*Schdle of munimts.*]

Signed, sealed, & delivered by the within [above] named A. in the presce of ——.

[*Rect endorsed or appended.*]

[Reced the day & yr first within [above] written of the within [above] named B. the sum of —— pounds, being the conson moy within [above] expd to have been pd by him to me.

(Signed) A.] (*k*).

(*g*) For other forms referring to the tenancies, see p. 433 *et seq.* If the parcels are contained in a schedule, the tenancies may conveniently be given in a separate column of the schedule, in which case say here :— "subjt to the leases & tenancies mentd in the schdle hto."

(*h*) See page 454, note. It is assumed in these Precedents that the statutory acknowledgment, &c., will be used whenever the case admits of it, both in the case of beneficial owners, and trustees and mortgagees. For the full form of express covenant for production by a beneficial owner, see p. 454; and for the form for trustees and mortgagees, see p. 458. As to statutory acknowledgment.

(*i*) As to the rights of the purchaser with respect to the execution of the conveyance, see the Conv. Act, 1881, s. 8; and as to execution by attorney, see s. 46. Execution.

(*k*) The endorsed receipt is now only used in special cases; *e.g.*, in the case of a company or public body, whose custom it is to have a special As to endorsed receipt

II.

PREC. II.

CONVEYANCE *of* FREEHOLDS *by a vendor seised in* FEE *to a purchaser.* SHORT *form* WITHOUT RECITALS (*a*).

Parties. *PARTIES*, A., of, &c. (hinafter called the vendor), 1. B., of, &c. (hinafter called the pchaser), 2.

Witnesseth. WITNETH that in conson of the sum of £—— pd by the pchaser to the vendor (the rect whof is hby acknowed), the vendor, as beneft owner,

Grant. hby grts to the pchaser, *pcels*, *see* p. 415 *et seq.*

Habendum. To HOLD to & to the use of the pchaser, his hrs & assns [*Acknowemt & undertakg as to munimts, see last precedent.*] IN WITS, &c.

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form of receipt signed by their authorised agent; see the Conv. Act, 1881, sub-s. 54, 55; above, p. 412, note. As to the payment of the purchase-money to the vendor's solicitor, see the same Act, s. 56, and the Trustee Act, 1888, s. 2; above, p. 412, note.

Stamp. As to the stamp, see Stamp Act, 1891, Schedule tit. "CONVEYANCE OR TRANSFER ON SALE;" and above, p. 349, note.

Searches. As to the various searches and enquiries to be made against a vendor, see now the Land Charges and Searches Act, 1888, 51 & 52 Vict. c. 51, and Rules of 1st January, 1889; Elph. & C. on Searches, and Supplement; 1 Dart, V. & P. Ch. xi. p. 516 *et seq.*; Wolstenholme & B. on the Conv. Acts, &c., p. 174. An additional search which may now possibly be proper is in the Index Map at the Land Registry Office, to ascertain that the title has not been registered.

(*a*) See notes to last precedent.

III

CONVEYANCE *of* FREEHOLDS *by* APPOINTMENT *only under a power to a purchaser in* FEE (*b*). VARIATION *where* RECITALS *are* OMITTED (*c*). PREC. III.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *Recite convce to such uses as A. shl appt, settg out the power fully. Contract for sale*, p. 407. [*Recital as to munimts*, p. 411.] NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, & in conson, &c. (the rect, &c.), *see Precedent I.*, the sd A., **as benefl owner**, in exercise of the power given to him by the hinbfe recited indre, & of every other power enablg him in this behalf, doth hby appt that, ALL, &c., *pcels*, p. 415 *et seq.* (*d*), shl, subjt, &c., *to leases & tenancies*, henceforth be & remain To THE USE of the sd B., his hrs & assns. [*Acknowemt & undertakg by A., as to munimts*, p. 459.] IN WITS, &c. (*e*). Appointment.

(*b*) This is for a case where the vendor has no estate in default of appointment or otherwise. The vendor is sometimes made to convey by grant as well as appointment, in case he should by any means have acquired an estate as well as a power; and where the conveyance is to uses, and an acknowledgment as to muniments is required, that mode should be adopted; see p. 455, note. For the form see the next precedent, and note thereto.

(*c*) Recitals might be omitted, the reference in that case to the deed creating the power being to "an indre dated, &c., & expd, &c."

(*d*) The enactment in the Conv. Act, 1881, s. 62, making a conveyance include "all the estate," &c., of the vendor, applies to appointments; see p. 432, note.

(*e*) As to the mode of executing a deed exercising a power, where special formalities are required by the power, see p. 80, note.

IV.

PREC. IV.

CONVEYANCE *of* FREEHOLDS *by* APPOINTMENT *under a power and by* GRANT. VARIATION *where* RECITALS *are* OMITTED, *and where the conveyance is to* USES.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *Recite convce to uses to bar dower in favour of A.*, p. 385. *Contract for sale*, p. 407. NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson, &c. (the rect, &c.), *see Precedent I.*, the sd A., **as benefl owner** (*a*), in exercise of the power given to him by the hinbfe recited indre (*b*) & of every other power enablg him in this behalf, doth hby appt (*c*), & by virtue of his este & intt, & by way of further

Witnesseth.

Appointment.

As to implied covenants in conveyance to uses.

(*a*) See pp. 441 and 473, note. This precedent is adapted to the case (now seldom occurring) of the vendor being entitled to the old uses to bar dower. Where the conveyance is to uses (see the next note), and the vendor appoints as well as grants as beneficial owner, the implied covenants created by the grant will be with the grantee, and the benefit of the covenants will go with the estate through him to the *cestuis que use*; but as the appointment is made direct to the uses without the medium of the grantee, the covenants implied by the appointment will be with the *cestuis que use* direct. The express covenants if inserted would be with the grantee to uses.

Seisin.

(*b*) If recitals are omitted say, "an indre dated, &c., & expd, &c."

Variation for conveyance to uses.

(*c*) If the conveyance is to any uses less simple than to the purchaser in fee, the appointment and grant must be by separate clauses in order that the seisin may not remain in the grantee to uses, the deed running from this point as follows:—

"That all & singr the hds hinafter descd & expd to be hby grted, shl (subjt as hinafter mentd) henceforth remain & be to the uses, upon the trusts, & subjt to the powers & provons hinafter decld & contd concerng the same: AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt, & for the conson afsd, the sd A., **as benefl owner**, doth hby grt & confirm unto the sd B., *pcels*,

assurce, doth hby grt & confirm unto the sd B., *pcels*, p. 415 *et seq.*, To HOLD the same premes UNTO & TO THE USE of the sd B., his hrs & assns, subjt, &c., *to leases & tenancies.* [*Acknowemt & undertakg by A. as to munimts*, p. 459.] IN WITS, &c. PREC. IV. Grant. Habendum.

V.

COVENANT *to* SURRENDER COPYHOLDS *on a Sale* (*d*). VARIATIONS *where the Copyholds are held of* SEVERAL MANORS (*e*). PREC. V.

PARTIES, A., *vendor*, 1; *pchaser*, 2. WHAS the sd A. is seised for an unincumbered este of inhance to him & his hrs of the hds [first] hinafter descd & covted to be surrendered, at the will of the lord, accdg to the custom of the manor of —— in the coy of —— [& of the hds 2ndly, &c.] & has agrd with the sd B. for the sale of the sd hds & premes to him for the sum of £——. [*Recital as to munimts*, p. 411.] NOW THIS INDRE WITNETH that in psuance, &c., Recitals. Witnesseth.

To HOLD the same premes unto the sd B. & his hrs, subjt, &c., *to tenancies*, to the uses, upon the trusts, & subjt to the powers & provons hinafter decld & contd, that is to say, &c."

As to the insertion of the statutory acknowledgment as to muniments in an appointment direct to uses, see p. 455, note.

(*d*) As to enfranchisement, see the Copyhold Act, 1887, 50 & 51 Vict. c. 73, s. 1. As to splitting admittances, see *Johnstone* v. *Spencer*, 30 Ch. D. 581.

(*e*) Sometimes the deed containing the covenants for title and production of muniments follows the surrender instead of preceding it as above, in which case a recital of the surrender would be substituted for the covenant to surrender; but as the latter plan has no practical advantage over the former (the technical objection with respect to the covenants running with the land in the former case, see 2 Dav. Prec. pt. 1, 366, not arising under the statutory covenants), and the statutory covenants for title could not in the latter case be implied (see p. 440), a form of such a deed is not given. Recitals might be dispensed with, the variations in the operative part for that case being sufficiently obvious. As to covenants for title and production on covenant to surrender.

PREC. V.

& in conson, &c. (the rect, &c.), *see Precedent I.*, the sd A., as beneft owner (*a*), doth hby covt with the sd B., his hrs & assns, that he, the sd A., or his hrs & all other necy pties, if any, will forthwith, at the cost of the sd B., his hrs or assns, surrender into the hands of the lord of the sd manor of ——, in the coy of ——, accdg to the custom thof [into the hands of the lords of the respive manors, of wch the same are resply holden as hinbfe is recited, accdg to the customs thof resply], *pcels*, p. 415 *et seq.* (*b*), to wch sd hds the sd A. was admitted out of ct, *or*, "at a ct holden for the sd manor," on the —— day of ——, on the surrender of X., *or*, "as the hr of Y., deced," To THE USE of the sd B., his hrs & assns for ever, to be holden of the lord of the sd manor [lords of the respive manors of wch the same are resply holden] accdg to the custom thof [resply], by & under the rents, fines, heriots, suits, & services due & of rt accustomed for the same: AND THE sd A. doth hby declare that in the meantime & until the sd hds & premes shl have been surrendered psuant to the covt hinbfe contd, he, the sd A., & his hrs (*c*) will stand seised thof in trust for the sd B., his hrs & assns. [*Acknowcmt & undertakg as to munimts*, p. 459.] IN WITS, &C. (*d*).

Covenant to surrender.

To use of purchaser.

Declaration of trust until surrender.

(*a*) See above, p. 470, note (*c*); and as to implying the statutory covenants for title in the case of copyholds, see p. 440.

Omission of general words and estate clause.

(*b*) The enactments in the Conv. Act, 1881, ss. 6 and 63, implying the general words and estate clause in conveyances, apply, by the express definition of "conveyance" in s. 2, to covenants to surrender copyholds; and as the word "conveyance" in the Act, though by s. 2 it *includes* all kinds of conveyances by *deed*, is not confined to them, those enactments also apply to surrenders.

Vesting of trust estate in copyholds.

(*c*) A trust estate in copyholds to which the trustee has been admitted vests in the customary heir or devisee, and not in the personal representatives, s. 30 of the Conv. Act, 1881, having been repealed as to that case by the Copyhold Act, 1887, s. 45. In *Re Mills' Trusts*, 37 Ch. D. 312 (re-argued, W. N., 1888, p. 155), it was held that if a sole trustee of copyholds had died between 31st December, 1881, and 16th September, 1887, the Copyhold Act, which was passed on the latter date, divested all trust estates from the personal representatives and vested them in the customary heir or devisee, subject to any disposition made by the personal representatives in the interim.

(*d*) The stamp will be on the surrender; see the Stamp Act, 1891, ss. 61, 65.

VI.

SURRENDER *of* COPYHOLDS *to a Purchaser. Variations where the Vendor's* WIFE *joins, and for a conveyance to two Purchasers as* JOINT TENANTS *or* TENANTS IN COMMON. PREC. VI.

Manor of ——, in the Coy of ——. } The —— day of ——.

BE IT REMEMBERED that on the day above-mentd, A., of, &c., a copyhd tenant of the sd manor, [& B. his wife,] came bfe me X., [deputy] steward of the sd manor, & [she, the sd B., havg been by me, the sd [deputy] steward, first examined separately & apart from her sd husbd, touchg her free & voluntary consent to the makg & passg the surrender hinafter contd & freely & voluntarily consentg thto as by law required,] did out of Ct, & in conson of the sum of £—— to the sd A. pd by C., of, &c., [& D., of, &c.,] (the rect whof is hby acknowed), surrender out of his [their & each of their] hands into the hands of the lord of the sd manor by the hands & acceptce of me, the sd [deputy] steward, by the rod accdg to the custom of the sd manor, *pcels*, TO THE USE of the sd C., his [C. & D., their] hrs & assns for ever [as tenants in common in eql shares], at the will of the lord accdg to the custom of the sd manor, by & under the rents, fines, heriots, suits, & services, due & of rt accustomed for the same. Memorandum. Surrender To use of purchaser

A.
B.

Taken [togr with the separate examinon of the sd B.,] the day & yr first above written by me. } X., [Deputy] Steward.

Rect for Conson Moy (*e*).

(*e*) Sections 54 & 55 of the Conv. Act, 1881, only apply to deeds.

VII.

PREC. VII.

ASSIGNMENT *of* LEASEHOLDS *by the Lessee or Assignee of the Lease to a Purchaser.* VARIATION *where Lessor's* LICENCE *is required.*

Recitals.

Lease.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. WHAS by an indre of lease dated, &c., & expd, &c., *pcels in full*, with the appurts thof were demised unto the sd A., his exs, ads, & assns, from the —— day of ——, for the term of —— yrs, subjt to the paymt of the rent thby reserved, & the pformce & observce of the covts on the pt of the lessee & condons thrin contd (*a*): AND WHAS the sd A. has agrd with the sd B. for the sale to him for the sum of £—— of the premes comprd in the sd indre of lease for the residue of the term thby grted as afsd, subjt to the rent reserved by & the covts

Agreement for sale.

(*a*) If the licence of the lessor is required to the assignment, the clause in the lease requiring his licence to an assignment will be recited. As to clauses of this nature, see the Conv. Act, 1892, 55 & 56 Vict. c. 13, s. 3. If the lessor is made a party to the assignment (which is not usual), the following recital will be inserted in this place :—

Recital as to concurrence of lessor.

"AND WHAS the sd, *lessor*, has agrd to concur in these psnts, for the ppose of givg his consent in mner hinafter appearg to the assnmt hby made," and the assignment will be expressed to be made "with the consent (hby testified) of the sd, *lessor*," and the following proviso should be added immediately after the habendum: "PROVD always that the licence hinbfe given by the sd, *lessor*, shl not be deemed to authorise any further assnmt [or any underlettg] of the premes." If the lessor gives licence by a separate instrument (for form of which, see LICENCES), the following recital of the fact may be inserted in this place: "AND WHAS the necy licence in writg of the landlord to the assnmt hby made has been duly obtained." In either of the above cases if the property assigned is comprised in more than one lease, and licence is required for the assignment of the property comprised in one lease only, add in the recital, after the words "hby made," the words "of the premes comprd in the sd indre of lease of, &c."

Proviso restricting licence.

& condons contd in the sd lease (*b*) : NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson of the sum of £—— now pd by the sd B. to the sd A. (the rect whof is hby acknowed) (*c*), the sd A., as benefl owner, doth hby assn unto the sd B., ALL & SINGR the [pces or pcels of land, messes, or tenemts] hds & premes comprd in or expd to be demised by the sd recited indre of lease, TO HOLD the same unto the sd B., his exs, ads, & assns, henceforth for all the residue now unexpired of the sd term of —— yrs grted by the sd indre of lease, subjt henceforth to the paymt of the rent, & pformce & observce of the covts on the pt of the lessee & condons by & in the same indre reserved & contd (*d*) ; AND the sd B. doth hby for himself, his hrs, exs, ads, & assns, covt with the sd A., his exs & ads, that he the sd B., his exs, ads, or assns, will henceforth durg the continuce of the sd term pay the rent reserved by & pform & observe the covts & agrmts on the pt of the lessee & condons contd in the sd indre of lease & will at all times keep the sd A., his hrs, exs, & ads, effectually indemnified agst all actions & pcdgs, costs, damages, expses, claims, & demands whatsr by reason of the non-paymt of the sd rent or any pt thof, or the breach, non-pformce or non-observce

PREC. VII.

Witnesseth.

Assignment.

Parcels.

Habendum.

Covenant of indemnity against rent and covenants (*e*).

(*b*) If the lease is at a rack rent and no money passes, say, "And whas the sd A. has agrd with the sd B. for the assnmt to him of the premes, &c., &c., in conson of the covt of the sd B. hinafter contd." The consideration will be similarly stated in the operative part.

Variation where no money passes.

If any of the muniments are retained add here introductory recital (if thought proper) as to muniments, see p. 411 ; and acknowledgment and undertaking after the habendum, see p. 459.

(*c*) If the vendor is an assignee of the lease, add recital of the devolution of title to him, see p. 395.

(*d*) Add, if so, "and subjt to an indre of underlease dated, &c., & expd, &c., whby the premes were demised to X. of, &c., for the term of —— yrs from the —— day of —— at the yrly rent of £——."

Variation, subject to underlease.

(*e*) As to the cases in which this covenant is required, see p. 461, note ; and for variations therein, see the form at p. 461.

PREC. VII. of the sd covts, agrmts, & condons, or any of them. IN WITS, &c.

VIII.

PREC. VIII.

ASSIGNMENT *of* LEASEHOLDS *by the original* LESSEE *to a purchaser.* CONCISE FORM *by* ENDORSEMENT *on the Lease or by supplemental Deed, without Recitals.* VARIATION *where* LESSOR *joins to* RELEASE *Lessee from* COVENANTS, *and takes* SUBSTITUTED *covenants from* ASSIGNEE (*a*).

PARTIES, the within-named A. (hinafter called the vendor), 1; B., of, &c. (hinafter called the pchaser),

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Variation for supplemental deed.

(*a*) See the last precedent and notes thereto. If the deed is supplemental instead of endorsed, add after the parties, "supplemental to an indre of lease dated, &c., & expd, &c. (hinafter refd to as the sd lease);" and make the necessary substitutions for the expressions "within named," "within written," &c., which are appropriate only to an indorsed deed.

Occasionally the lessor is willing to release the original lessee from the covenants of the lease, on having a substituted covenant from the assignee; in that case the lessor will be added as a party of the second part, and the following will be added at the end of the deed in place of the covenant of indemnity:

Variation where lessor releases original lessee from covenants, the assignee entering into a substituted covenant.

"AND THIS INDRE ALSO WITNETH that in conson of the covt of the sd B., *pchaser*, hinafter contd & of the premes, the sd X., *lessor*, doth hby rele the sd A., his hrs, exs, & ads, from all & singr the covts & agrmts on the pt of the sd A. in the sd indre of lease contd & all liability thrunder, & all actions, pcdgs, claims, & demands in respt of any breach of any such covts htofore or hrafter committed or happeng: PROVD ALWAYS that the rele hinbfe contd shl not affect the sd covts & agrmts so far as the same are real covts & agrmts bindg on the sd demised premes, & the psons from time to time possed thof, but only

2. WITNETH that in conson, &c. (the rect, &c.), the vendor, as benefl owner, doth hby assn unto the pchaser, ALL the premes demised by the within-written indre of lease, TO HOLD to the pchaser, his exs, ads, & assns, for the residue of the term of —— yrs grted by the sd lease, subjt to the rent, covts, & condons of the sd lease: AND the pchaser hby covts with the vendor to keep him & his exs & ads at all times indemnified agst such rent, covts & condons, & all claims, pcdgs, costs, & expses in respt thof. IN WITS, &c. PREC. VIII. Assignment. Parcels. Habendum. Covenant of indemnity.

IX.

CONVEYANCE *of* FREEHOLDS *and* LEASEHOLDS *by* TRUSTEES *for* SALE *and* EXECUTORS *under a will* (*b*). RESERVATION *of a* RIGHT *of* WAY *to the* VENDORS. PREC. IX.

PARTIES, A. & B., *trees & exors*, 1; C., *pchaser*, 2. *Recite lease*, p. 393; *& devolon of title to testor*, p. 395, Recitals.

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so far as regards the psonal liability of the sd A., his hrs, exs & ads, thrunder: PROVD ALSO that the sd rele or anything hrin contd shl not prejudice or affect the rt of the sd C., his exs, ads & assns, to re-enter upon the sd demised premes for non-paymt of the rent reserved by or the breach of any of the covts, agrmts, or condons contd in the sd lease: [*Add covt by assnee with lessor to pay rent & pform covts, as in a lease mutatis mutandis.* See LEASES.]

(*b*) By the Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 63, where land is held in trust for sale, if the proceeds of sale and the rents until sale, or any share thereof are settled in trust for a tenant for life or other limited owner as there defined, the powers of sale and other powers of the Act were vested in him; and although, by s. 56, the power of the trustees to sell was kept alive, the consent of the tenant for life or limited owner was made necessary to its exercise; but this having been productive of great inconvenience in practice, was altered by the Settled Effect of Settled Land Act, 1882, s. 63, as to trusts for sale,

PREC. IX.

saying, "became absolutely vested," &c., &c.; *will of X., settg forth genl devise & bequest in trust for sale & conversion, & rect clause (if any) & apptmt of exors: death & probate: & testor's seisin of freehd*, p. 398, *mutatis mutandis*; AND WHAS the sd A. & B., as trees of the sd will & in psuance of the trust for sale thrin contd as afsd, have agrd with the sd C. for the sale to him of the sd freehd hds & premes, subjt to such reservon as is hinafter contd for the sum of £——,

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as modified by the Act of 1884, s. 7.

Land Act, 1884 (47 & 48 Vict. c. 18), s. 7, by which (sub-s. 1) the powers conferred by s. 63 of the Act of 1882, on the tenant for life or other beneficial owner, are not to be exercised without an order of Court; so that until such an order has been obtained, the trust for sale remains unaffected. On the other hand, if such an order has been obtained, the powers of the trustees are thereby suspended (see sub-s. iv.), but with a protection to persons dealing with them unless the order is registered as a *lis pendens* (sub-s. vi.). See note on the Acts, *infra*, p. 501 *et seq.*

As to sales for payment of debts or legacies.

If the sale is for payment of debts or legacies under a charge in the will, s. 63 of the Act of 1882 would not apply, and the power of executors to sell for payment of debts, would also of course be paramount. It should be observed that the rule laid down in *Re Tanqueray-Willaume and Landau*, 20 Ch. D. 465, that where executors are selling real estate charged with debts after 20 years from the testator's death, a presumption arises that the debts have been paid, and a purchaser is therefore put on inquiry, does not in general apply to executors selling leaseholds under their common law power, unless the purchaser has notice that the bequest has been assented to; *Re Whistler*, 35 Ch. D. 561; see generally as to sales for payment of debts, 2 Dav. Prec., Pt. 2, pp. 468 *et seq.*, note.

Married woman trustee.

As to whether a married woman trustee for sale can convey and give a discharge for the purchase-money as a *feme sole* without the concurrence of her husband, see p. 257.

Trust for sale, when spent.

That a trust for sale, whether peremptory or discretionary, remains in force although all the beneficiaries have become absolutely entitled in possession and are *sui juris*, until they all concur in putting an end to it by electing to take the property unconverted, see 1 White & Tudor L. C. Eq., p. 993; *Biggs* v. *Peacock*, 22 Ch. D. 284; *Re Tweedie*, 27 Ch. D. 315; 32 Sol. J. 729.

Sale by representatives of last trustee.

As to the power of the representatives of the last surviving trustee to sell under a trust for sale, see *Re Morton*, 15 Ch. D. 143; *Re Cunningham*, [1891] 2 Ch. 567, above p. 113; the Conv. Act, 1881, s. 30; Lewin, Trusts, p. 245.

For a form where the tenant for life joins to consent and covenant for the title, see *infra*.

& as exors of the sd will (*a*) have agrd with the sd C. for the sale to him of the sd leasehd hds & premes for the sum of £——: NOW THIS INDRE WITNETH that, in psuance &c., & in conson, &c., *the pchase-moy for freehds*, (*b*) (the rect, &c.) the sd A. & B., as such trees as afsd, do resply hby grt unto the sd C., *pcels*, p. 415, *et seq.*; *reservon of rt of way*, p. 429; *habendum to C., in fee*, p. 432. AND THIS INDRE ALSO WITNETH that in psuance, &c., & in conson, &c., *the pchase-moy for the leasehds* (the rect, &c.), the sd A. & B. as psonal repves of the sd X., do resply hby assn unto the sd C., *leasehd pcels by reference to lease*, p. 419; *habendum to C., subjt to rent & covts*, p. 436; [*acknowemt by A. & B. as to munimts*, p. 459]; *covt by C. to indemnify A. & B. & este of X. agst rent & covts of lease*, p. 461. IN WITS, &c.

PREC. IX.

Witnesseth.

Grant.

Further witnesseth

Assignment.

X.

CONVEYANCE *of* FREEHOLDS *by* MORTGAGOR *and* MORTGAGEE *to a purchaser.* VARIATIONS *where there have been a* TRANSFER *and* FURTHER CHARGE, *and other dealings with the mortgage; also where* PART *of the* PURCHASE-MONEY *is paid to the* MORTGAGEE, *in part discharge of the mortgage debt, and where the* WHOLE *of the* PURCHASE MONEY *is paid to the* MORTGAGOR. *Also where* CONCISE RECITALS *are inserted* (*c*).

PREC. X.

(*a*) Although the leaseholds are comprised in the bequest in trust for sale, the sale of the leaseholds should be made by the executors in that character, unless it appears that they have assented to the bequest; but if they sell under the trust for sale, that would, of course, amount to an assent. If they sell as executors, the bequest to them in trust for sale is of course immaterial, and need not be recited as far as the leaseholds are concerned.

Sale of leaseholds by trustees or executors.

(*b*) The purchase-money is kept distinct, as the freeholds and leaseholds are sold by the vendors in different characters.

(*c*) If the mortgage is equitable only, it may and should (in order to

Discharge

PREC. X.

Recitals.

Mortgage in fee.

Parties, A., *mtgor*, 1; B., *mtgee*, 2; C., *pchaser*, 3. Whas by an indre dated, &c., & expd, &c., in conson of the sum of £—— pd by the sd B. to the sd A., the hds hinafter descd & intd to be hby assured, were conveyed & assured by the sd A. unto & to the use of the sd B., his hrs & assns, by way of mtge, for securg the paymt to the sd B., his exs, ads, or assns, of the sd sum of £—— with intt for the same as thrin expd (*a*): And whas the sd sum of £—— still remains owing to the sd B., on the secy of the sd indre of, &c., but all intt thron has been pd up to the date of these psnts (*b*): And whas the sd A. has agrd with the sd C. for the sale to him for the sum of £—— of the hds hby assured in fee simple in posson, free from incumbces: And whas it has been agrd that the sd sum of £—— shl be pd to the sd B. out of the sd pchase-moy, & that he shl join in these

Contract for sale.

Agreement of mortgagee to join.

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of equitable mortgages.

keep it off the title), be discharged by a simple receipt on the deed or memorandum of charge, and the property conveyed as unincumbered; see 2 Dav. Prec., Pt. 2, 277, 821.

As to notice of second mortgage.

That a first mortgagee with notice of a second mortgage, who concurs with the mortgagor in selling the property, and allows him to receive the balance of the purchase-money, is liable to the second mortgagee to the extent of such balance, see *West London Commercial Bank* v. *Reliance, &c., Building Society*, 29 Ch. D. 954.

(*a*) If required, recite transfer and further charge, p. 390.

(*b*) Instead of the recitals in the text to this point, the following may be substituted, if it is desired to avoid detailed recitals of the dealings with the mortgage:

Variation for concise recitals.

"Whas the sd A. is seised in fee simple in posson of the hds hby assured free from incumbces, except the ppal sum of £—— [sums of £—— & £——] secd thron with intt, by a mtge in fee simple, dated, &c., & expd, &c. [& a deed of transfer & further chge, dated, &c., & expd, &c.], wch sd ppal sum of £—— [sums of £—— & £——, makg togr the sum of £——] togr with the secs for the same has [have] by the effect of divers mesne assurces, acts in the law, & events, & ultimately by an indre dated, &c., & expd, &c., become vested in the sd B., but all intt on the sd sum of £—— has been pd up to the date of these psnts."

psnts in mner hinafter appearg (*c*): NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson (*c*) of the sum of £—— now pd by the sd C., at the reqt (*d*) of the sd A. in mner follg, namely, the sd sum of £—— pt thof to the sd B., in full dischge of the moys owing to him under his sd mtge secy as afsd (the rect whof the sd B. doth hby acknowe) & the sum of £—— residue thof to the sd A. (the rect & paymt in mner afsd of wch respive sums, makg togr the sd pchase-moy of £——, the sd A. doth hby acknowe), the sd B., **as mtgee** (*e*), by the diron of the sd PREC. X. Witnesseth. Consideration.

(*c*) If no part of the purchase-money is to be paid to the mortgagee, the recital as to the state of the mortgage debt will state that the principal with "some intt" is due (or it may be omitted); the recital as to the mortgagee joining will be as at p. 410; and the consideration will be, "in conson of the sum of £—— pd by the sd C. to the sd A., with the consent of the sd B. (the rect, &c.), & of the premes." Variation where mortgagee receives no part of purchase-money.

If part of the purchase-money is to be paid to the mortgagee in part discharge of the mortgage, the recital as to the state of the mortgage debt, will state the amount due on the mortgage as in the text; the recital as to the mortgagee joining will be as at p. 410; and the consideration will be, "In conson of the sum of £—— now pd by the sd C., by the diron of the sd A., in mner follg, namely, the sum of £——, pt thof to the sd B., in dischge of the sum of £—— so due to him for intt, & in pt dischge of the sum of £—— so due to him for ppal as afsd (the rect, &c.), & the sum of £——, the residue thof to the sd A. (the rect, &c.)." Where mortgagee receives part of purchase-money in part discharge.

The rest of the precedent will follow the form in the text, except as mentioned in note (*b*).

(*d*) If all the purchase-money is paid to the mortgagee, say, "at the reqt of the sd B. to the sd A., the rect whof he, the sd A., & the paymt whof in mner afsd he, the sd B., doth hby acknowe." Where mortgagee receives all purchase-money.

(*e*) See p. 438 *et seq.* The words "**as mtgee,**" imply the usual covenant against incumbrances by the person conveying in that capacity; and the words "**as benefl owner,**" imply covenants for title by A. as to his own acts and those of B. If the mortgagee is not paid off in full, as he is not compellable to join, he should convey "at the Implied covenants.

PREC. X.

Grant.

Habendum.

A. (*a*), doth hby grt & rele, & the sd A., as benefl owner, doth hby grt & confirm unto the sd C., *pcels*, p. 415 *et seq.*, To HOLD the same premes UNTO & TO THE USE of the sd C., his hrs & assns, dischged from all ppal moys & intt intd to be secd by & from all claims & demands under the hinbfe recited indre of mtge of, &c. (*b*). IN WITS, &c. (*c*).

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reqt," and not "by the diron" of the vendor; but if the mortgage was created by the vendor, or by any person through whom he claims otherwise than for value, his statutory covenants for title would still extend to the acts of the mortgagee as being a person "claiming under" him (*Davie* v. *Sabin* [1893] 1 Ch. 523); there would, however, in that case be an inaccuracy (though not of any importance) in the covenant for right to convey, see p. 439.

Variation for mortgage by demise.

(*a*) Where the mortgage is by demise say, "& to the intent that the sd term of —— yrs created by the sd indre of mtge may merge in the revon of the hds comprd thrin & hby assured, doth hby assn, surrender, & rele, & the sd A., &c."

As to muniments.

(*b*) Add, if required, recital immediately before the testatum as to muniments retained by A., and at end of deed acknowledgment and undertaking by him as to production; or if B. is not fully paid off and retains the deeds, add acknowledgment by him, but without any undertaking, see pp. 454, 455, note; as to whether a mortgagee is bound in that case to give an acknowledgment, see *Yates* v. *Plumbe*, 2 Sm. & G. 174; 1 Dart V. & P. 766.

As to stamp duty on conveyance by mortgagor and mortgagee.

(*c*) With regard to the stamp on a conveyance by mortgagor and mortgagee, it may be observed that the deed is not treated as chargeable with "reconveyance" duty in addition to the *ad volorem* sale duty, although if the mortgage were released by a separate deed, the extra duty would be incurred. It may also be mentioned, that if part only of the property in the mortgage is released by a separate deed, it is treated in practice as liable only to a 10*s*. duty, the full reconveyance duty being payable on the final release.

XI.

ASSIGNMENT *of* LEASEHOLDS *by* MORTGAGOR *and* MORTGAGEE *to a Purchaser, where the mortgage was by* DEMISE. VARIATION *for mortgage by* ASSIGNMENT (*d*). PREC. XI.

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2; C., *pchaser*, 3.

WHAS by an indre of lease dated, &c., & expd, &c., *pcels in full*, with the appurts thof were demised unto the sd A., his exs, ads, & assns, from the —— day of —— for the term of —— yrs, subjt to the paymt of the rent thby reserved & the pformce & observce of the covts on the pt of the lessee & condons thrin contd: AND WHAS, by an indre dated, &c., & expd, &c., the premes comprd in the sd lease were demised by the sd A. to the sd B., his exs, ads, & assns, for the residue of the term thby grted, except the last day thof (*e*), by way of mtge for securg the paymt to the sd B., his exs, ads, or assns, of the sum of £——, with intt thron at the rate & on the day thrin mentd: AND WHAS the sd A. has agrd with the sd C. for the sale to him for the sum of £—— of the premes comprd in the sd lease for all the residue now to come of the sd term thby grted as afsd subjt to the rent reserved by & the covts & condons contd in the sd lease: AND WHAS the sd sum of £—— still remains owing to the sd B. on the secy of the sd indre of mtge of, &c., but all intt thron has been pd up to the date of these psnts: AND WHAS it has been agrd that the sd sum of £—— shl be pd to the sd B. out of the sd pchase-moy, & that he shl concur in these psnts in mner hinafter appearg: NOW THIS

Recitals Lease. Mortgage Contract for sale. State of mortgage debt. Agreement for mortgagee's concurrence.

(*d*) This may be shortened in a manner similar to Precedent VIII.

(*e*) For the case of a mortgage by assignment, say "assned" instead of "demised," and omit the words "except the last day thof." For recital of devolution of title to the mortgage, see Form XXVII., p. 391. Variations for mortgage by assignment.

PREC. XI.

Witnesseth. INDRE WITNETH that in psuance of the sd recited agrmt & in conson of the sum of £——, now pd by the sd C. at the reqt of the sd A. in mner follg, namely, the sum of £—— pt thof to the sd B. in full dischge of the moys owing to him under his sd mtge secy as afsd (the rect whof the sd B. doth hby acknowe) & the sum of £——, residue thof to the sd A. (the rect & paymt in mner afsd of wch respive sums, makg togr the sd pchase-moy of £——, the sd A. doth hby acknowe), the sd B., **as mtgee**, by the diron of the sd A., to the intent that the sd term created by the sd indre of mtge of, &c., may merge in the sd term created by the sd

Assignment. indre of lease, doth hby assn, surrender, & rele (*a*) & the sd A., **as benefl owner**, doth hby assn & confirm unto the sd C. all & singr the [pces or pcels of land, messes or tenemts] hds & premes comprd in or expd to be demised by the sd

Habendum. recited indre of lease To HOLD the same unto the sd C., his exs, ads, & assns, henceforth for all the residue now unexpired of the sd term of —— yrs, grted by the sd indre of lease, subjt henceforth to the paymt of the rent & pformce & observce of the covts on the pt of the lessee & condons by & in the same indre reserved & contd, but dischged from all ppal moys & intt intd to be secd by & from all claims & demands under the sd indre of mtge of, &c.: *Covt by C. to indemnify A. agst rent & covts of lease*, p. 461, (*b*). IN WITS, &c.

(*a*) If the mortgage of the lease was by assignment, say, "the sd B., **as mtgee**, by the diron of the sd A., doth hby assn & rele."

(*b*) As to muniments, see p. 486, note (*b*).

XII.

CONVEYANCE *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS *with the concurrence of* FIRST AND SECOND MORTGAGEES *of the* FREEHOLDS, *the* LATTER *being also* MORTGAGEES *of the* COPYHOLDS *and* LEASEHOLDS. PREC. XII.

PARTIES, A., *vendor*, 1; B. & C., *mtgees of freehds*, 2; D., *second mtgee of freehds, & mtgee of leasehds & copyhds*, 3; E., *pchaser*, 4. *Recite mtgee in fee to B. & C. of freehds*, p. 387, *omittg the covt for paymt; Lease under wch leasehds are held*, p. 393; *Mtge to D. of freehds (subjt to the prior mtge), of the copyhds by covt to surrender, & of the leasehds by demise or assnmt*, p. 388; *Condonal surrender of copyhds, to D.*, p. 388; *Contract for sale*, p. 407; *Agrmt for apportionmt of pchase-moy for stamp duty as to copyhds*, p. 411; *State of mtge debts, ppal due with* "some intt," p. 410; AND WHAS it has been agrd that the whole of the sd pchase-moy shl be pd to the sd A., & that the sd B. & C., & also the sd D., shl concur in these psnts in mner hinafter appearg: [*Agrmt as to munimts*, p. 411]: NOW THIS INDRE, &c., that in psuance, &c., & in conson of the sum of £——, *apportioned pchase-moy for the freehds & leasehds*, now pd by the sd E. to the sd A. with the consent of the sd B. & C. & also of the sd D. (the rect, &c.), & in conson of the premes they the sd B. & C., **as mtgees**, at the reqt of the sd A., do hby grt & rele, & the sd D., **as mtgee**, at the reqt of the sd A., doth hby grt & rele, & the sd A., **as benefl owner**, doth hby grt & confirm unto the sd E., *frechd pcels*, p. 415 *et seq.*; *Habendum to E. in fee, free from the mtges*, p. 434. AND THIS INDRE FURTHER WITNETH that in psuance, &c., & for the conson afsd, the sd D., **as mtgee**, at the reqt of the sd A. (*c*), doth hby assn & rele, & the sd A., **as benefl owner**,

Recitals.

Witnesseth.

Grant.

Further witnesseth.

(*c*) For variations if the mortgage of the leaseholds was by demise see last precedent.

PREC. XII. Assignment. Further witnesseth. Covenant to surrender copyholds. Witnesseth. Release of copyholds.

doth hby assn & confirm, &c., *assnmt of leasehds to E., for residue of term, free from the mtge, subjt to the rent & covts*, pp. 436, 437. AND THIS INDRE ALSO WITNETH that in psuance, &c., & in conson of the sum of £——, *apportioned pchase-moy for copyhds*, now pd by the sd E. to the sd A., with the consent of the sd D. (the rect, &c.), & in conson of the premes, *covt by A. to surrender copyhds to E. in fee*, p. 476, "dischged from all ppal moys & intt, &c." *secd by the mtge*, p. 434, *form* VIII., *& declon of trust thof in the meantime*, p. 476. AND THIS INDRE ALSO WITNETH that in further psuance, &c., & in conson of the premes the sd D., as mtgee, at the reqt of the sd A., doth hby rele unto the sd E., his hrs & assns, ALL & singr the hds hby covted to be surrendered, dischged from all ppal moys & intt secd by, & all claims under the sd indre of mtge of, &c.: [*Acknowemt by B. & C., & by D. as to munimts retained by them resply*, p. 460]: *Covt by E. with A. to pay rent & pform covts of lease*, p. 461. IN WITS, &c.

XIII.

PREC. XIII

CONVEYANCE *of* FREEHOLDS *by* MORTGAGOR *and* MORTGAGEE *to* TENANTS *in* COMMON; *the* MORTGAGE *being kept alive for the benefit of the purchasers* (*a*). VARIATION *where the mortgagee is dead, and his* REPRESENTATIVE *joins* (*b*).

Recitals.

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2; C. & D., *pchasers*, 3; E., *tree for pchasers*, 4. *Recite mtge formally*, includg

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As to keeping alive mortgage debt.

(*a*) This precedent is an example of a method of keeping alive a mortgage as a protection to a purchaser against possible concealed incumbrances of later date, as to which, see 2 Dav. Prec., part 1, p. 324. But this precaution is now seldom adopted. It is a question whether the keeping alive the mortgage debt as personal estate of the purchaser would not make probate duty payable in respect of it on his death; compare *A.-G.* v. *Ailesbury*, 12 App. Cas. 672.

(*b*) The legal estate in lands of inheritance vested in a mortgagee dying

the covts for paymt of ppal & intt, p. 387; *Contract for sale*, p. 407; *State of mtge debt*, p. 410; AND WHAS it has been agrd that the sd sum of £——, *the amount of ppal &* PREC. XIII. Agreement.

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before the 1st of January, 1882 (the date of the coming into operation of the Conv. Act, 1881), devolved on his heir or devisee; but by the V. & P. Act, 1874, s. 4, the legal personal representative of a mortgagee was enabled "on payment of all sums secured by the mortgage," to convey or surrender the mortgaged estate (being freehold or copyhold to which the mortgagee had been admitted); so that in the case of a mortgagee dying before 1882, the re-conveyance on discharge of the mortgage may be made either by the personal representative, or by the heir (or devisee), in whom (subject to the statutory power given to the personal representative) the legal estate remains vested, and who is not disabled by the Act from re-conveying. This enactment does not apply to a transfer of the mortgage (*Re Spradbery's Mortgage*, 14 Ch. D. 514), nor to a conveyance to a purchaser under the power of sale (*Re White's Mortgage*, W. N. 1881, p. 115), but only to a conveyance on redemption; and it is doubtful whether it would apply to the above precedent, where the mortgage debt is transferred to a trustee. Devolution of mortgaged estates. V. & P. Act, 1874.

The clause in the Act of 1874 was repealed by the Conv. Act, 1881, s. 30, which enacts (as to mortgagees dying after 1881), that a mortgaged estate of inheritance shall, on the death of the mortgagee, and "notwithstanding any testamentary disposition," vest in his personal representative in the same manner as a chattel real. In the case therefore of a mortgagee dying after 1881, the legal estate in freeholds must be conveyed by the personal representative. It seems doubtful whether this enactment, which relates to trust and mortgaged estates vested "in any person solely" applies to a feme covert mortgagee, where the legal estate is in the husband and wife jointly in right of the wife. Provisions of the Conv. Act, 1881.

By the Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 45, section 30 of the Conv. Act, 1881, is not to apply to copyholds to which the mortgagee has been admitted, so that in that case (which, however, is of rare occurrence) the heir or devisee must convey; and this repeal has been held to operate retrospectively, *Re Mills*, 37 Ch. D. 312; see above, p. 476. It may be remarked that this repeal of the enactment of 1881, would not, it is conceived (having regard to 52 & 53 Vict. c. 63, s. 11), revive (as to copyholds) the repealed Act of 1874, as to reconveyances on redemption. Copyhold Act, 1887.

In the above precedent, if the mortgagee be dead, the following alterations would be required. His executor or administrator, and if he died before 1882, his heir or devisee, but otherwise only his executor or administrator, will be a party of the 2nd (or 2nd and 3rd) part; see above. After the recital of the mortgage will follow recitals of the will, if any, of the mortgagee, as to the appointment of executor, and (if under the old law) the devise, if any, of mortgaged estates,—the death, and (under the old law, and if no devise), the heirship, and probate; or, if no will, his death intestate and (if under the old law) the heirship and grant of administration. The mortgage money will be stated to be paid to the Variations where the mortgagee is dead.

PREC. XIII. *intt*, shl be pd to the sd B. out of the sd pchase-moy, & that the sd mtge shl be kept on foot for the benefit of the sd C. & D., & that the sd B. shl concur in these psnts in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c., the rect, &c. (£—— *pd to* B., *& £—— to* A.), the sd B., **as mtgee**, by the diron as well of the sd A., as of the sd C. & D., doth hby assn unto the sd E. (*a*), ALL THAT the sd sum of £——, owing on the secy of the sd indre of mtge of, &c., & the intt due & to accrue due thron, & the benefit of all secs for the same To HOLD the same UNTO the sd E., his exs, ads, & assns, UPON TRUST for the sd C. & D., & their respive hrs & assns, & to assn & dispose of the same as they, the sd C. & D., & their respive hrs & assns, shl direct, & in the meantime to permit the sd ppal sum & intt to attend the inhance of the hds comprd in the sd mtge & hby grted, & to protect the same agst all mesne incumbces, chges, & estes, if any such there be: AND THIS INDRE

Witnesseth.

Assignment of debt.

Habendum.

Upon trust.

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executor or administrator, by whom the mortgage debt will be assigned "**as mtgee**," or "**as psonal repve**" of the mortgagee, the statutory covenant against incumbrances being implied in either case. No recital should be inserted as to the heir or devisee agreeing to concur, as he is bound to do so if required. The legal estate will be conveyed by the personal representative, or by the heir or devisee as the case may be (see above), "**as mtgee**" or (as to the former) "**as psonal repve.**"

Assignment of debt on payment.

(*a*) Prior to 1882, a mortgagee could not be required to assign his debt on being paid off (*Dunstan* v. *Patterson*, 2 Phil. 345; 2 Dav. Prec. part 2, 280); but by the Conv. Act, 1881, s. 15, a mortgagee, whether legal or equitable, on being redeemed by the mortgagor or any one claiming under him (see the definition of "mortgagor" in s. 2), may (unless he is in possession) be required to assign the debt and convey the mortgaged property as the person redeeming him may direct. In consequence of the decision in *Teevan* v. *Smith*, 20 Ch. D. 724, that the section only applied when the person redeeming could have required a re-conveyance to himself, it was enacted by the Conv. Act, 1882 (45 & 46 Vict. c. 39), s. 12, that the right thereby conferred should be enforceable by each incumbrancer or by the mortgagor, notwithstanding any intermediate incumbrance. S. 15 of the Act of 1881, does not apply to a tenant for life of mortgaged property, who has failed to keep down the interest, and has obtained the usual order permitting him to redeem; *Alderson* v. *Elgey*, 26 Ch. D. 567.

FURTHER WITNETH that in psuance, &c., & for the conson afsd, the sd B., as mtgee, by the diron of the sd A., doth hby grt, & the sd A., as benefl owner (*b*) doth hby grt & confirm unto the sd C. & D., ALL, &c., *pcels*, p. 415, *et seq.* TO HOLD the same premes UNTO & TO THE USE of the sd C. & D. their hrs & assns, as tenants in common, in eql shares, but subjt nevs to & chged with the sd sum of £—— & intt hby assned to the sd E., his ex, ads, & assns, in trust as afsd, to the intent that the chge created by the sd indre of mtge of, &c., shl remain subsistg in equity & vested in the sd E., his exs, ads, & assns, IN TRUST for the benefit of the sd C. & D. & their respive hrs & assns & as a protection agst mesne incumbces as afsd. IN WITS, &c.

PREC. XIII.
Further witnesseth.
Grant.
Habendum to purchasers, subject to the mortgage

XIV.

CONVEYANCE *of* FREEHOLDS, LEASEHOLDS, *and* COPYHOLDS (*c*) *by a* MORTGAGEE *under a* POWER OF SALE *contained in the mortgage, or the power in the* TRUSTEES *and* MORTGAGEES ACT, 1860, *or the* CONVEYANCING ACT, 1881 (*d*). *The mortgage of the* LEASEHOLDS *having been effected by* DEMISE. VARIATIONS *where it was effected by* ASSIGNMENT (*e*).

PREC. XIV.

PARTIES, A., *mtgee*, 1; B., *pchaser*, 2. *Recite lease to* K., *mtgor*, *setty out the pcels fully*, p. 393; *Mtge*, p. 388, *omittg*

Recitals.
Mortgage.

(*b*) See p. 438 *et seq.*, 448, note (*b*), 449, note (*k*).

(*c*) As to enfranchisement, see the Copyhold Act, 1887, s. 1.

(*d*) See the former Act (Lord Cranworth's), 23 & 24 Vict. c. 145, ss. 11–16, 32 and 33, applying to mortgages by deed, whether legal or

Statutory powers of sale.

(*e*) As to the effect of a sale by a first mortgagee to the mortgagor on a second mortgage, see *Otter* v. *Lord Vaux*, 6 De G. M. & G. 638; and as to the effect in the like case of a sale to the mortgagor's trustee in bankruptcy, see *Bell* v. *Sunderland Building Society*, 24 Ch. D. 618.

PREC. XIV. *the covt for paymt,* [& it was by the same indre provd, &c., *set out fully the follg clauses of the power of sale, the authority to sell & convey, the declon (if any) that the nominal revon of the leasehds, if mtged by demise, shd be held in trust*

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equitable, but of real or leasehold property only, executed between the 28th Aug., 1860, and the end of 1881; and the latter Act, ss. 19—22, and 67 (and see the definition of "mortgage," &c., in s. 2), applying to mortgages by deed, whether legal or equitable, of any property real or personal, executed since 1881. The statutory provisions are subject in every case to the terms of the mortgage, by which they may be excluded or varied. The provisions in the Act of 1860 as to mortgages are repealed by the Act of 1881, but with a saving as to deeds previously executed (s. 71); see *Re Solomon*, 40 Ch. D. 508. A mortgagee selling under either Act is empowered to give receipts for the purchase-money, and the purchaser is fully protected against any irregularity (for want of notice or otherwise) in the sale, except (it is presumed), where he has express notice of it; see *Parkinson* v. *Hanbury*, 1 Dr. & Sm. 143; *Selwyn* v. *Garfit*, 38 Ch. D. 273.

Power to convey.

Under the Act of 1860, s. 15, a mortgagee selling is empowered by deed to convey the property to the purchaser for all the estate and interest which the mortgagor had power to dispose of, except that in the case of copyholds the beneficial interest only is to pass; this has been held to enable a mortgagee of leaseholds by demise to convey the whole term; *Hiatt* v. *Hillman*, 19 W. R. 694; and an equitable mortgagee (by deed) to convey the legal estate; *Re Solomon, ubi sup.* But the power in the Act of 1881 to convey to the purchaser (s. 21) is more restricted, being confined to "such estate and interest as is the subject of the mortgage," and does not enable an equitable mortgagee by deed to convey the legal estate vested in the mortgagor, *Re Hodson*, 35 Ch. D. 668. Both Acts in terms only authorise assurances by deed, leaving the power to execute customary assurances of copyholds to implication.

As to notice.

A notice to pay off the mortgage money preparatory to a sale cannot under the usual power be validly given till after default, *Selwyn* v. *Garfit, ubi sup.* As to what is a sufficient notice where the equity of redemption has been incumbered, it was held in *Hoole* v. *Smith*, 17 Ch. D. 434, where notice was required to be given to the mortgagor "or his assigns," that notice to the mortgagor alone was insufficient; but this, as it seems, would not apply to the power in the Act of 1860 (see s. 13); and as regards the Act of 1881, although by s. 20, sub-s. 1, notice is required to be given to "the mortgagor or one of several mortgagors," and by s. 2 "mortgagor," includes all persons interested in the equity of redemption, difficulty would rarely arise, having regard to s. 67, by which notices may be served, among other modes, by being left at or affixed to the mortgaged premises.

As to a sale by a mortgagee to a company in which he is a shareholder, see *Farrar* v. *Farrars Ld.*, 40 Ch. D. 395.

for the pchaser, the clause protectg pchasers from irregularities in the sale, & the rect clause (if any)]; *Condonal surrender of the copyhds to A.*, p. 388 (*a*); *Agrmt for sale by mtgee*, p. 407, *saying as to the leasehds*, "for all the residue now to come of the sd term thby grted, & for all such este & intt in the nominal revon of —— days thby reserved as the sd A. is entled to or has power to assn" (*b*); *Apportionmt of pchase-moy for stamp duty as to copyhds*, p. 411; [*Recital as to munimts*, p. 411]: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson, &c., *the sum being the apportioned pchase-moy for the freehds & leasehds* (the rect, &c.) the sd A., **as mtgee**, in exercise of the power vested in him by virtue of the hinbfe recited indre of mtge [& the Act 23 & 24 Vict. c. 145, *or* "the Convcg & Law of Ppty Act, 1881,"] & of every other power enablg him in this behalf, doth hby grt and convey unto the sd B., *freehd pcels*, p. 415 *et seq.*; *Habendum to B. in fee*, p. 432, *free from equity of redmon*, p. 437; AND THIS INDRE FURTHER WITNETH, that, in psuance of the sd agrmt, & for the conson afsd, the sd A., **as mtgee**, in exercise, &c., *as above*, doth hby assn unto the sd B., ALL & SINGR the sd —— hds & premes comprd in & demised by the hinbfe recited indre of lease; *Habendum to* B., his exs, ads, & assns, for all the residue now unexpired of the sd term of —— yrs less —— days, & for all such este or intt in the same nominal revon of —— days as the sd A. is entled to or has power to assn (*c*) *free from equity of redmon, as above, but*

PREC. XIV.

Witnesseth.

Grant of freeholds, free from mortgage.

Further witnesseth.

Assignment of leaseholds.

(*a*) If the sale is made under the statutory power or an express power of sale in the proper form, it does not concern the purchaser to inquire into the state of the mortgage debt; and a recital as to this need not be inserted. As to state of mortgage debt.

(*b*) If the mortgage of the leasehold was by assignment, the reference here and in the operative part to the nominal reversion left in the mortgagor will of course be omitted.

(*c*) This would pass the mortgagee's equitable interest in the nominal reversion under the declaration of trust thereof (if any) in the mortgage, and also, in cases to which the Act 23 & 24 Vict. c. 145, s. 15, applies, the legal interest therein; see above, p. 493, note. If the mortgagee has a power of attorney to assign the nominal reversion to a purchaser, and the power is expressed to be irrevocable, he can do so notwithstanding As to nominal reversion.

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subjt to rent & covts of lease, p. 436: AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt, & in conson, &c., *the apportioned pchase-moy for the copyhds* (the rect, &c.), the sd A., **as mtgee**, in exercise, &c., *as above*, doth hby covt with the sd B., his hrs & assns, that he, the sd A., his hrs or assns, will immedly after the exon of these psnts, at the cost of the sd B., his hrs or assns, surrender (*a*) into the hands of the lord or lady of the sd manor, *copyhd pcels*, p. 415 *et seq.*; To THE USE of the sd B., his hrs & assns, accdg to the custom of the sd manor by & under the rents, fines, suits, & services due & of rt accustomed for the same, but free, &c., *from equity of redmon, as above. If the mtge of the leasehds was effected by assnmt, & A. will be under any continuing liability* (*see* p. 271, *note* (*d*)), *add covt by B. with A., his exs & ads, for indemnity agst rent & covts of lease*, p. 461; [*Statutory acknowemt by A. as to munimts*, p. 459, *see* p. 471, *note* (*h*)]. IN WITS, &c.

Further witnesseth.

Covenant to surrender copyholds.

To use of purchaser.

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circumstances which would formerly have operated as a revocation (Conv. Act, 1882, s. 8); see p. 201, note. This applies also to copyholds covenanted to be surrendered with a declaration of trust till surrender and a power of attorney. If the mortgage contains the device for enabling the mortgagee to get in the nominal reversion by a clause empowering him to appoint a new trustee thereof in place of the mortgagor, and to make a vesting declaration under the Conv. Act, 1881, s. 34 (see MORTGAGES), the following should be added, which is conceived to be effectual although the case is one of a sole trustee, notwithstanding the words "as joint tenants" in the act, see Hood and Challis, 100.

Appointment and vesting declaration as to nominal reversion.

"And in psuance of the power or provon for this ppose contd in the sd indre of mtge the sd A. doth hby appt the sd B. to be a tree of the sd nominal revon of —— days in the place of the sd, *mtgor*, & in psuance of the power or provon afsd, & of the statutory provon in this behalf doth declare that the sd nominal revon of & in the sd leasehd premes shl vest in the sd B. as such tree."

Mode of conveying copyholds.

(*a*) This of course implies that the mortgagee must first get admitted on the conditional surrender, unless the mortgagor's concurrence can be obtained, and there are no subsequent surrenders on the Court rolls, in which case the fine on the mortgagee's admittance may be saved by vacating the conditional surrender and procuring a surrender direct from the mortgagor to the purchaser.

XV.

PREC. XV.

CONVEYANCE *of* FREEHOLDS *by* MORTGAGEES *under a* POWER *of* SALE. *A* CONCISE *Form by* SUPPLEMENTAL DEED (*b*) *without Recitals.* VARIATION *where the Sale is made under the* STATUTE *of* 1860 *or* 1881 (*c*).

PARTIES, A. & B., *mtgees*, (hinafter called the vendors), 1; C., *pchaser*, (hinafter called the pchaser), 2; supplemtl to an indre of mtge dated, &c., & expd, &c., WITNETH that in conson, &c., (the rect, &c.), the vendors, **as mtgees** in exercise of the power vested in them by virtue of the abovementd indre of mtge, [& the Act 23 & 24 Vict. c. 145, *or*, the Conveg & Law of Ppty Act, 1881], & of every other power in this behalf them enablg, do resply hby grt unto the pchaser, *pcels*, p. 415 *et seq.*; *Habendum to pchaser in fee, free from mtge*, p. 434, *form* VIII. IN WITS, &c.

XVI.

PREC. XVI.

CONVEYANCE *of Freeholds by* EXECUTORS *of a* MORTGAGEE, *under an* EXPRESS POWER *of* SALE. VARIATIONS *where there has been a* FURTHER CHARGE *and* TRANSFER *of the* MORTGAGE, *and where the mortgagee having died before* 1882 *his* HEIR *concurs* (*d*).

PARTIES, A. & B., *exs of mtgee or transferee*, 1; [C., *hr of mtgee or transferee*, 2;] D., *pchaser*, 3. *Recite the mtge*, Recitals.

(*b*) See p. 384, note.

(*c*) See p. 493, note (*d*).

(*d*) If the mortgagee died before 1882, his heir or devisee of mortgage estates must concur, notwithstanding the Vendor and Purchaser Act, Devolution of mort-

PREC. XVI.

settg out the power of sale (if any), namely, the authority to sell & convey, [*the provon as to hr of mtgee joing in convce,*] *the clause protectg pchasers, & the rect clause (if any),* [*further chge (if any), & if the mtge has been transferred, add the clause (if any), declarg that the power may be exercised by any one capable of givg a dischge for the mtge-moy, & recite the transfer,* p. 390]: AND WHAS the sd, *mtgee or transferee,* died on the —— day of ——, havg by his will dated the —— day of —— appted the sd A. & B. exs thof, who duly proved the same on the —— day of ——, in the —— Ct of ——: [AND WHAS the sd, *mtgee or transferee,* died intestate as to the legal este in the sd mtged premes, & left the sd C. his eldest son & hr at law]: *Agrmt for sale,* p. 407: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— now pd by the sd D. to the sd A. & B. (the rect, &c.), [the sd C., as tree by the diron of the sd A. & B., doth hby grt &], the sd A. & B. as mtgees, in exercise, &c., *see* p. 495, do hby grt & confirm unto the sd D., *pcels,* p. 415 *et seq.*; *Habendum to D. in fee, free from equity of redmon,* p. 437, *form* XVII., *if there has been a further chge & transfer, say,* "indres of mtge & further chge & transfer, or eir of them." IN WITS, &c.

Will of mortgagee.

Intestacy as to legal estate of mortgaged property.

Wit-nesseth.

Grant.

XVII.

PREC. XVII.

CONVEYANCE *by surviving mortgagees under a power of sale of* LIFE INTERESTS *in* REALTY *and* PERSONALTY *and* POLICIES (*a*).

Recitals.

PARTIES, A. & B., *mtgees,* 1; C., *pchaser,* 2. WHAS by an indre, &c., the sd K., *mtgor,* bargained, sold, & demised,

gage estates.

1874, s. 4; if he died since the 31st Dec., 1881, the legal estate necessarily vests in and will be conveyed by his personal representatives under the Conv. Act, 1881, s. 30; see p. 490, note.

(*a*) As to the effect of an alienation by a tenant for life of real estate,

his este for life under the will of Y., deced, in the —— & hds specified in the 1st & 2nd pts of the 1st schdle hto, the freehd & inhance whof was then subjt to the anny, mtges, & chges specified in the 1st & 2nd pts of the 2nd schdle hto, to the sd A., & B., & D., their exs, ads, & assns, for the term of 99 yrs from the day next bfe the date of the indre now in recital, if the sd K. shd so long live, & the sd K. thby assned his life intt in the divds & annl income of the stks, funds, shares, & secs subjt to the trusts of an indre of settlemt, &c., & specified in the —— schdle to the indre now in recital, & also the sevl policies of assurce on the life of the sd K., the parlars whof are specified in the 4th schdle hto, to the sd A., B., & D., their exs, ads, & assns, by way of mtge, to secure the repaymt to the sd A., B., & D., or the survors or survor of them, or the exs or ads of such survor, their or his assns, of the sum of £——, togr with intt thron after the rate & on the day thrin mentd, & it was thby provd, *&c., recite the clauses of the power of sale, if any, as in Prec.* XVI., (*omittg the provon for the heir concurrg*), *& jt acct clause, if any* (*b*); And whas in exercise & psuance of certn powers of sale & provons contd in the sd will of the sd Y., the —— & hds specified in the 2nd pt of the sd 1st schdle hto have been sold, & the pchase-moys have been applied in the dischge of the incumbces specified in the 2nd pt of the sd 2nd schdle hto, & in the pchase of £—— Stk, in the names of L. & M., the psnt trees of the sd will: And whas the stks, funds, shares, & secs now subjt to the trusts decld by the sd indre of settlemt, & representg the stks, funds, shares, & secs specified in the —— schdle to the hinbfe recited indre of mtge, are specified in the 3rd schdle hto: *Recite death of D.:*

prec. xvii.

Mortgage of life estate, &c.

Sale of settled estates.

Investments of settled personalty.

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of his life estate, on his powers under the Settled Land Act, 1882, see *infra*, p. 501 *et seq*. Notice of this deed should be given to the trustees of the settlement, and the insurance office; as to the latter, see the Policy of Assurance Act, 1867, and as to the necessity of stamping the deed, the Stamp Act, 1891, s. 118.

(*b*) See p. 493, note (*d*). An express power of sale would be necessary as to personalty before 1882, as the power in Lord Cranworth's Act would not apply. As to the joint account clause, see Conv. Act, 1881, s. 61.

PREC. XVII.

Agreement for sale.

AND WHAS the sd A. & B. have, in exercise of the power of sale vested in them under the sd indre of mtge [& the statute in that behalf], agrd with the sd C. for the sale to him for the sum of £——, of the hds specified in the 1st pt of the sd 1st schdle hto, & the sd sum of £—— Stk, & any hds, stks, funds, shares, or secs, wch, by virtue of the powers or provons contd in the sd will, may at any time hrafter be substituted for the same hds & Stk resply, subjt to the anny, mtges, & chges specified in the sd 1st pt of the sd 2nd schdle hto, for the residue now unexpired of the sd term of 99 yrs, if the sd K. shd so long live: And also the life intt of the sd K., in the divds & annl income of the stks, funds, shares, & secs, the parlars whof are specified in the sd 3rd schdle hto, & in the stks, funds, shares, & secs wch, by virtue of the powers & provons of the sd indre of settlemt, may hrafter be substituted for the same, & also the sevl policies specified in the 4th schdle hto, & the moys assured thby resply: NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c., (the rect, &c.,) the sd A. & B., as mtgees in exercise of the power or authority vested in them under the sd recited indre of mtge [& the statute in that behalf], & of every other power or authority in this behalf them enablg, do resply hby grt & assn unto the sd C.: 1st, ALL & SINGR the —— & hds specified in the sd 1st pt of the sd 1st schdle hto: 2ndly, ALL THAT the sd sum of £—— Stk: 3rdly, ALL & SINGR the hds, stks, funds, shares, & secs wch, by virtue of any of the powers or provons of the sd will of the sd Y., may at any time hrafter be substituted for the sd hds specified in the 1st pt of the sd 1st schdle hto, or any of them, or for the sd Annies, or any pt thof, & the rents, profits, divds, & income of the same respive premes, 1st, 2ndly, & 3rdly, hinbfe mentd: TO HOLD all the sd premes hby assned UNTO the sd C., his exs, ads, & assns, subjt to the anny, mtges, & chges specified in the sd 1st pt of the sd 2nd schdle hto, for the residue now unexpired of the sd term of 99 yrs, if the sd K. shd so long live, free & dischged from the ppal moys & intt secd by, & all claims &

Witnesseth.

Grant.

Freeholds.

Habendum.

To purchaser.

demands under, the sd indre of mtge: AND THIS INDRE PREC. XVII.
ALSO WITNETH that in psuance, &c., & for the conson Wit-
afsd, the sd A. & B. as mtgees in further exercise of the nesseth.
power or authority afsd, do resply hby assn unto the sd C.: Assign-
1st, ALL THAT the life intt of the sd K., in the sd stks, ment.
funds, shares & secs specified in the sd 3rd schdle hto, & in Personalty
any moys, stks, funds, shares, & secs hrafter representg or
substituted for the same, or any of them, or any pt thof
resply, & the intt, divds, & annl income of the same respive
premes, & 2ndly, ALL THOSE policies of assurce specified in Policies.
the sd 4th schdle hto, & all moys assured by, or to become
payable under the same resply: To HOLD all the sd premes Habendum.
lastly hby assned UNTO the sd C., his exs, ads, & assns To pur-
absolutely, free & dischged, &c., *as above*. IN WITS, &c. chaser.

[*Four Schdles.*]

NOTE ON SETTLED LAND ACTS.

As many of the following precedents are based on or affected by the Settled Land Act, 1882 (45 & 46 Vict. c. 38), it will be convenient to insert here a short notice of the provisions of the Act, and the Amending Acts of 1884 (47 & 48 Vict. c. 18) and 1890 (53 & 54 Vict. c. 69), and the decisions and various points arising thereon, relative to sales. Provisions of Settled Land Act as to sales.

By s. 2, sub-s. 1, the Act applies to all settlements both past and future of "land," (which includes land of any tenure and incorporeal hereditaments), or any estate or interest in land, whether effected by deed or will or otherwise, and whether by one or several instruments; and a settlement for the purposes of the Act means an instrument or instruments under or by virtue of which the land "stands for the time being limited to or in trust for any persons by way of succession;" but by sub-s. 4, the question whether the land is settled for the purposes of the Act is to be "governed by the state of facts and the limitations of the settlement at the time of the settlement taking effect." This definition closely follows that of the Settled Estates Act, 1877, and the words "taking effect" in sub-s. 4, evidently mean as in that Act, "coming into operation" (see 3 Dav. Prec., p. 524, note). By s. 4 of the Act of 1890, any instrument whereby a tenant for life in consideration of marriage or by way of family arrangement makes an assignment of or charge upon his estate or interest under the settlement (not being a security for money advanced), is to be deemed one of the instruments creating the What is a settlement within the Act. Act of 1890.

settlement, and not an assignment for value within s. 50 of the Act of 1882 (as to which see *infra*). This would apply to the common case where the tenant for life charges his life estate, on a re-settlement or otherwise, with a provision for his eldest son.

Derivative settlements.

Where interests taken under a settlement have afterwards been made the subject of derivative settlements, the original settlement alone, so long as it lasts, is the settlement for the purposes of the Act (*Re Knowles*, 27 Ch. D. 707); and in the common case of a settlement by father and son, after a disentail, preserving the father's old life estate, it has been considered that the two settlements are for all the purposes of the Act distinct (except in a case coming within s. 4 of the Act of 1890); and that as soon as the original settlement is spent and there ceases to be a statutory tenant for life thereunder, the resettlement alone becomes the settlement, so that any family charges subsisting under the old settlement can no longer be overridden by an exercise of the statutory powers.

Compound settlements.

However, in the recent case of *Re Ailesbury*, W. N. 1893, 45, a different view was taken, and it was considered, having regard to the statutory definition of "settlement," that a series of settlements and resettlements of entailed estates by father and son of the usual type constituted together a "compound" settlement, although the then subsisting limitations arose under the last settlement alone (those of the prior settlements having run out), on the ground that, having regard to s. 2, sub-s. 4, the point of time to be looked to in determining the question whether there was a settlement in each case was the date of the settlement and not the present time; and it was accordingly held that upon trustees of the compound settlement being appointed by the Court to receive the purchase-money, the sale and conveyance by the tenant for life under the last re-settlement would overreach all the family charges which were subsisting under the prior settlements. It will be noted that this decision only applies where at the time of the resettlement there was a "succession of estates" still subsisting under the prior settlement which was kept alive, and not to a case where the fee simple had previously come into possession; since in the latter case there never was a "succession of estates" under the two settlements taken together. Notwithstanding the existence of such a compound settlement, it is beyond question, having regard to the previous decisions on the Act and the uniform practice, that the original settlement so long as there is a tenant for life thereunder, remains the only settlement; and also that the second settlement, when the limitations thereof have come into possession, may still, at the option of the tenant for life, be treated as the only settlement, so that capital money may be paid to the trustees of that settlement, although in that case the old family charges would not be overreached; or in order to overreach those charges, he may (according to *Re Ailesbury*, if it applies) pay the purchase-money to trustees appointed by the Court of the compound settlement. It seems clear that s. 4 of the Act of 1890 would not have the effect of creating a compound settlement, so as to affect the powers of the trustees under the original settlement; a charge coming within that clause being in the same position as if it had been contained in the original settlement,

and the enactment having the same effect as the overreaching clause commonly inserted in re-settlements by father and son.

Settlement of two estates by different instruments.

Where two estates are settled by different instruments, although to identically the same uses, and with the same trustees, it would seem that the two settlements do not constitute one according to the definition; but in *Re Mundy*, [1891] 1 Ch. 399, where land was devised by will to the uses of a prior settlement, and money was bequeathed to be invested in land to be conveyed to the same uses, it was held that the settlement and will (according to the spirit if not the letter of the Act), constituted one settlement for the purpose of the application of the money as capital money, although the trustees of the two instruments were different; and see *Re Lord Stamford*, 43 Ch. D. 84. This seems likely in some of its consequences to lead to difficulty.

Act cannot be excluded.

The Act cannot be excluded or controlled by the settlement, s. 51; and has been held to override a previous private Act (*Re Chaytor*, 25 Ch. D. 651); and the statutory powers of the tenant for life, as they override the settlement, are not affected by an action for the administration of the trusts by the Court (*Cardigan* v. *Curzon Howe*, 30 Ch. D. 531).

Powers given to owner in possession.

The powers of the Act are vested in the tenant for life, as defined by s. 2 (5), namely, the person beneficially entitled to the "possession or receipt of the rents and profits" of the settled land, for his life; and any other limited owner as defined by s. 58, where his estate is "in possession." "Possession" in ss. 2 (5) and 58 is to be read as contra-distinguished from "remainder" or "reversion" (*Re Atkinson*, 31 Ch. D. 577); so that it is immaterial whether the tenant for life is in possession personally or by his trustee, or (in the case of an infant) his guardian (*Re Morgan*, 24 Ch. D. 114, 116); or by a receiver appointed by the Court. But a minority clause by which the trustees are empowered to apply at their discretion all or any part of the rents for the maintenance of an infant, and to accumulate the rents retained for the benefit in certain events of other persons, would prevent the infant from being entitled "to the possession or receipt of the rents and profits," see *Re Atkinson, ubi sup.*, *Re Horne*, 39 Ch. D. 84; and a tenant for life whose estate is subject to an out and out trust for accumulation of the whole rents during a fixed term so as to be added to corpus, has not an estate in possession within the Act, *Re Strangways*, 34 Ch. D. 423.

Reversion.

The definition of tenant for life clearly excludes the application of the Act to a settlement of a reversion, until it falls into possession.

Powers not affected by incumbrances.

The powers of the tenant for life are not affected by the existence of incumbrances on the settled land, or on his life estate, whether created by the settlement or otherwise (s. 2 (7), and s. 50 (1, 4)), *e.g.*, a mortgage, or a charge of jointure or portions secured by a term or otherwise under the same or a prior settlement (see as to the latter, s. 20 (2)); although the whole of the rents may be absorbed by expenses and interest (*Re Jones*, 24 Ch. D. 583; 26 Ch. D. 736). So also a trust for accumulation of the rents for discharging incumbrances, which may at any time cease or be put an end to by the tenant for life by paying off the charges, does not affect his powers (see s. 58, sub-s. 1 (vi.); *Re Clitheroe*, 28 Ch. D. 378; 31 Ch. D. 135; *Williams* v. *Jenkins*, [1893] 1 Ch. 700); and it

follows that his powers would not be affected by a mortgagee taking possession.

Tenant for life cannot assign powers.

The tenant for life cannot assign or release or contract not to exercise his powers (s. 50 (1, 2)); but he cannot exercise them to the prejudice of an assignee or incumbrancer on his life estate without the latter's consent, with a saving as to ordinary rack-rent leases (s. 50 (3)); (see *Re Sebright*, 33 Ch. D. 429); but this is subject to the modification made by s. 4 of the Act of 1890 (see above); as to a person having merely a rent-charge, see *Re Ailesbury*, W. N. 1893, 45.

To what limited owners the Act applies.

The Act (s. 2 (5), and s. 58), applies to the following limited owners when entitled in "possession," viz., 1. A tenant for his own life. 2. A tenant in tail. 3. A tenant in fee simple subject to an executory gift or limitation over in any event. 4. A person entitled to a base fee. 5. A tenant for years determinable on life other than a lessee at a rent. 6. A tenant *pur autre vie*, with the like exception. 7. A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease during the life or to be defeated by an executory gift over (see *Re Morgan*, *ubi sup.*, and the peculiar case of *Re Hazle*, 26 Ch. D. 428; 29 Ch. D. 78), or is subject to a trust for accumulation (see *Re Clitheroe*, *ubi sup.*; *Re Strangways*, *ubi sup.*). 8. A tenant in tail after possibility of issue extinct. 9. A tenant by the curtesy (see the Amendment Act of 1884, s. 8); and 10. A person entitled to the rents under a trust for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale or until forfeiture on bankruptcy or other event.

As to persons entitled concurrently.

Where there are two or more persons entitled concurrently as tenants in common or joint tenants or otherwise, they together constitute the tenant for life, s. 2 (6). In *Re Atkinson*, 30 Ch. D. 605; 31 Ch. D. 577, it was held that the common trust creating a life estate protected against bankruptcy, &c., by means of a discretionary trust for the application of the income for the benefit of all or any exclusively of specified objects for the time being in esse, did not under this clause or s. 58 constitute the objects *pro tem.* of the trust a compound tenant for life within the Act.

As to undivided shares.

The Act applies to a settlement of an undivided share, s. 2 (10, i.), and where the settlement comprises an undivided share, or where under the settlement the land has come to be held in undivided shares, the tenant for life of a share may join in the exercise of the statutory powers with the owners of or persons having power of disposition over the other shares, s. 19. In *Re Collinge*, 36 Ch. D. 517, where under the settlement the land had come to be held in undivided shares, one of which remained in settlement, it was held that the tenant for life of the latter share could not sell without the concurrence of the owner of the other; but this clearly could not apply to the case of a settlement originally comprising only an undivided share, the other share being held under a distinct title. It may here be mentioned that where there are several concurrent owners entitled in possession under the same settlement, it is conceived that they must all join in an application for sale under the Settled Estates Act, 1877 (see s. 23), the dispensing powers given by

ss. 25—28 having reference only to remaindermen (see s. 24); and that the orders in *Re Dryden*, 50 L. J. Ch. 752, and *Re Thorp*, W. N. 1876, 251, were therefore *ultra vires*.

Power of sale.

A tenant for life (which in the Act and in the following remarks includes other limited owners having the powers of one) is by the Act invested with very large powers of selling "the land or any easement right or privilege over or in relation to the same" (s. 3 (i.)); which includes power to create and sell to an adjoining landowner an easement or right over the settled land; but it is a question whether it authorises the release and extinguishment of an existing easement or right held with and annexed to the settled land, over adjoining land, see *Hood & Challis*, 193.

Sale for rentcharge.

As to sales or grants in fee for a rentcharge, see s. 10, and the Act of 1890, s. 9, and the Small Holdings Act, 1892, 55 & 56 Vict. c. 31, ss. 12, 13.

Enfranchisement.

The power of sale includes power to enfranchise copyholds or freeholds held of a settled manor (s. 3 (ii.)); and see the Copyhold Act, 1887, ss. 25, 26, enabling the lord of the manor in certain cases to give receipts for the compensation money although his estate in the manor may be only a limited one; and s. 24 as to expenses.

Reservations and restrictions.

The sale must be at the best price that can reasonably be obtained (s. 4 (1)); but as to sales for purpose of artizans' dwellings, see 53 & 54 Vict. c. 70, s. 74, and as to small holdings, see the Small Holdings Act, 1892, ss. 12, 13. The Act gives the usual subsidiary powers (s. 4 (3, 4, 5)), and authorises the making of reservations or imposition of restrictions "with respect to building on or other user of the land, or mines or minerals, *or any other thing*, to be made binding by covenant, condition, or otherwise, on the tenant for life and the settled land or any part thereof, or on the other party and any land sold to him" (s. 4 (6)); and, on a sale for building purposes, to appropriate and lay out roads, &c., with sewers, &c. (s. 16); and also power to sell the surface without the mines and minerals (as defined by s. 2 (10, iv.)); and *vice versâ*, with or without a reservation or grant of powers of working, easements, &c. (s. 17 (1)).

Timber.

On a sale of an estate with the timber on it, the tenant for life, though empowered to cut and sell timber for his own use, is not entitled to the price of the timber; *Re Llewellin*, 37 Ch. D. 317, above p. 273, note (*c*).

Mansion house, &c.

"The principal mansion house and the pleasure grounds and park and lands usually occupied therewith," cannot be sold or exchanged without the consent of the "trustees of the settlement" (as defined by the Act; see *infra*), or an order of Court (see s. 10 of the Act of 1890, substituted for s. 15 of the original Act); but where the house is usually occupied as a farmhouse, or the house and grounds, &c., usually occupied therewith do not exceed 25 acres, the house is not to be deemed a principal mansion house. As the Act overrides the settlement, the Court may order a sale of the mansion house, though expressly negatived by the settlement (*Re Brown*, 27 Ch. D. 179). As to the considerations which should guide the Court in consenting to a sale of the mansion house, &c., or the reverse, see *Bruce* v. *Ailesbury*, [1892] 1 Ch. 506, A. C. 356. The word "principal" does not of course imply that there should necessarily be a second

mansion or house. The clause would in many cases prevent the sale under the Act, unless the requisite consent were obtained, of outlying parts of the estate intermixed with small portions of wood or coppice usually kept in hand and "occupied with" the mansion. It would also apply to land which has been usually occupied with the mansion, though at the time of sale let to a tenant. See the form of order authorising the sale of the mansion house, &c., in the rules of December, 1882; and see *Re Spurway*, 10 Ch. D. 230.

Power of tenant for life to convey.

By s. 20 (1) full power is given to the tenant for life to execute the necessary conveyance to effectuate the sale, or the creation of the easement or right sold, "for the estate or interest the subject of the settlement or for any less estate or interest," "including copyhold or customary or leasehold land vested in trustees;" which dispenses with the necessity for the concurrence of the trustees as to the legal estate in copyholds or leaseholds vested in them, and also doubtless notwithstanding the absence of any express mention of that case, as to the legal estate in freeholds so vested, having regard to the generality of the power to convey for "the estate the subject of the settlement." It is also conceived that the power to convey would extend to a legal estate outstanding in the settlor of which he has expressly declared himself a trustee for the purposes of the settlement, as in the case of copyholds which he has covenanted to surrender with the usual declaration of trust until surrender; but not to a legal estate outstanding in a trustee who has not declared himself such for the purposes of the settlement, as such a legal estate is not "the subject of the settlement;" but if a legal estate, outstanding at the date of the settlement, is afterwards got in and conveyed to the uses thereof, the settlement and the conveyance of the legal estate would, as it seems, thenceforth together constitute the settlement under s. 2 (1), so that the conveyance of the tenant for life would pass the legal estate.

To what estates and interests conveyance is subject.

By s. 20 (2) the conveyance of the tenant for life is effectual to pass the land conveyed, or the easements or rights created, discharged from the limitations, powers, and provisions of the settlement, and from all estates, interests and charges subsisting or to arise thereunder, but subject to estates and charges having priority to the settlement, or which have been conveyed or created for securing money actually raised, and leases, easements, &c., previously granted; so that the conveyance operates in this respect in a manner similar to a conveyance under the ordinary power of sale, so as to overreach all the estates, charges and powers of charging subsisting under the settlement, other than mortgages or charges created under the powers or trusts thereof for money actually raised, and leases, &c.; but not those subsisting under a prior settlement; but as to "compound" settlements see above. A doubt has been suggested upon the words "subject to all such estates and charges as have been conveyed or created for securing money actually raised," as to whether [the conveyance would not be subject to a mortgage created by a remainderman on his estate (the case of an incumbrance by the tenant for life on his life estate being expressly provided for by s. 50). But this construction, which would render the Act unworkable, and would involve the absurdity that the estate of a

purchaser from the remainderman would be overriden by the conveyance (*Wheelwright* v. *Walker*, 23 Ch. D. 752), while that of a *mortgagee* would not, is not regarded in practice as tenable, and does not appear to be legitimate; see s. 50 (3), which seems to imply that, but for that provision, the conveyance of the tenant for life would override a mortgage of his life estate, and, *pari ratione*, a mortgage by a remainderman. It seems that the above words of exception should be read as controlled by those which precede, so that the estates and charges excepted are only those created or conveyed under the "limitations, powers, or provisions" of the settlement, *i.e.*, securities for money charged by the settlement itself, or under the trusts of terms or powers contained in it. It will be observed that a term created by the settlement for raising money, *e.g.*, to pay debts, although preceding the estate of the tenant for life, would be overridden by the conveyance.

Copyholds.

By s. 20 (3) in the case of copyhold or customary land the conveyance passes the right to admittance without any surrender. As to fines, see *Re Naylor*, 34 Ch. D. 217.

Operation of conveyance.

It is important to remember that the conveyance of the tenant for life does not operate like a conveyance under the ordinary power of sale, by appointment of the use with the aid of the Statute of Uses, but is a statutory conveyance of the estate similar to a conveyance by a limited owner under the Lands Clauses Consolidation Act, 1845; so that on the seisin so passing in the case of freeholds uses may be declared in the ordinary way (see s. 20 (1)), *e.g.*, to the uses of a settlement.

As to trustees being parties.

If the purchase-money is paid into Court, the trustees need not be parties, unless for the purpose of testifying their consent to the sale of the mansion house, &c., or giving a covenant against incumbrances, or for production of muniments; for none of which purposes, however, are they compellable to join unless they think fit. Even if the money is paid to the trustees they need not and are not bound to be parties, an endorsed receipt by them in the usual form for the purchase-money being sufficient; and this would be an authority to the solicitor producing the deed to receive the money under the Conv. Act, 1881, s. 56, and the Trustee Act, 1888, s. 2: see p. 412, note.

Shifting of incumbrances.

The tenant for life is also empowered to transfer an incumbrance affecting the land sold to any other part of the settled estates with the consent of the incumbrancer; see ss. 5 and 21 (4, 5, 6); and a precedent of a deed for this purpose, Vol. II., MORTGAGES.

Payment and investment of purchase-money.

The purchase-money is by s. 22 (1), to be paid at the option of the tenant for life, either to the "trustees of the settlement," whose receipt (s. 40), whether they were appointed by the settlement or by an order of Court under s. 38 (*Cookes* v. *Cookes*, 34 Ch. D. 498), is a good discharge (subject to s. 39, enacting that capital money under the Act is not to be paid to fewer than two trustees, unless the settlement authorises the receipt of money by one trustee), or into Court. It has been considered that the option given to the tenant for life to direct payment into Court cannot be exercised unless at the time of completion there are trustees (*Hatten* v. *Russell*, 38 Ch. D. 334; at p. 345). It was held that if the money was paid into Court it would not afterwards be paid out to the trustees (*Cookes*

v. *Cookes, ubi sup.*) ; but this has been altered by the Act of 1890, s. 14. The money is to be reinvested or applied in some or one of the modes provided by s. 21, as extended by subsequent legislation, which includes the discharge of incumbrances, the purchase of land, and the payment of costs (see s. 21, sub-s. ii., vii., x. ; and *infra*, p. 523, note) ; the investment or application of the money if paid to the trustees, being required to be made according to the direction of the tenant for life, and if paid into Court, on his application ; s. 22 (2, 3). As to the costs of an attempted sale see *Re Smith*, [1891] 3 Ch. 65. For a form of direction by the tenant for life to the trustees to pay the purchase-money and costs, see *infra*, DIRECTION AND CONSENT.

Contracts.

Full powers are given by s. 31 to a tenant for life to enter into and vary contracts for sale, &c., which are to be binding on, and may be carried into effect by his successors in title ; and by the Act of 1890, s. 6, this is extended so as to enable a tenant for life to make a conveyance for giving effect to a contract made by any previous owner.

Who are trustees for purposes of the Acts.

By the Act of 1882, s. 2 (8), the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or with power of consent to or approval of the exercise of such a power of sale, or if there are no such trustees then the persons who are by the settlement declared to be trustees thereof for the purposes of the Act are to be the trustees for those purposes. This definition has been extended by the Act of 1890, s. 16, by enacting that where there are for the time being no trustees of the settlement within the meaning of the Act of 1882, then the following persons shall for the purposes of the Act be trustees of the settlement, namely, (i.) the persons, if any, who are for the time being under the settlement trustees with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations *as the land to be sold*, or with power of consent to or approval of the exercise of such a power of sale ; or if there be no such persons, then (ii.) the persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale, *of the land to be sold*, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not. It had previously been decided under the original Act that the power of sale must not be a deferred power : *Wheelwright* v. *Walker*, 23 Ch. D. 752 ; *Re Horne*, 39 Ch. D. 84. As to the case where the power is deferred to the death of the tenant for life, who is himself one of the trustees, see 37 Sol. J. 109. The words italicized in the above clause in the Act of 1890, raise a doubt as to whether it is not confined to the case where a sale is pending, so that the trustees would not be such for the purpose of any lease or exchange, or any other dealing except a sale ; a restriction which may give rise to great doubt and difficulty. See further as to what amounts to a power of sale, *Re Garnett*, 25 Ch. D. 595. It is abundantly clear from the wording of the above definitions that trustees with power of sale are within them, although the power is subject to a restriction as to consents : *Constable* v. *Constable*, 32 Ch. D. 233 (where, however, the decision was not rested on the right ground), and the case

of *Re Johnstone*, 17 L. R., Ir. 172, is plainly untenable. Assuming that trustees with power of sale for a limited purpose, *e.g.*, to pay debts or legacies, would be trustees for the purposes of the Acts while the power is subsisting, it is conceived that they would cease to be such when the purpose of the power is satisfied, a case of some difficulty. It is also difficult to see what is the effect of a settlement constituted by two instruments, each with a different set of trustees, as in *Re Mundy*, [1891] 1 Ch. 399.

Appointment of trustees by Court.

By section 38 of the Act of 1882, if there are at any time no trustees within the meaning of the Acts, or where it is expedient for the purposes of the Acts that new trustees be appointed, the Court is empowered to appoint trustees who, and the survivors and survivor of them, while continuing to be trustees or trustee, are for the purposes of the Acts to be the trustees or trustee. Where there are trustees of the settlement, but for want of a power of sale they are not trustees within the Acts, it is desirable that the existing trustees should be appointed by the Court, for the purposes of the Acts, to avoid possible inconvenience arising from the existence of two sets of trustees. As to the practice of the Court in appointing trustees under s. 38, see *Re Kemp*, 24 Ch. D. 485; *Re Wright*, *ib.*, 662; *Re Harrop*, *ib.*, 717. As to "compound" settlements, see above. As to the subsequent appointment of new trustees, see the Act of 1890, s. 17, above, p. 115.

The Act, ss. 41–43, contains full provisions for the indemnity and reimbursement of the trustees.

Tenant for life in a fiduciary position.

The tenant for life is in the exercise of his statutory powers placed by s. 53 in a fiduciary position, as to which see *Wheelwright* v. *Walker*, *ubi up.*; *Thomas* v. *Williams*, 24 Ch. D. 558; *Re Ailesbury*, [1892] 1 Ch. 506; but by s. 54 purchasers dealing *bona fide* are protected; see *Hatten* v. *Russell*, 38 Ch. D. 334.

Power of tenant for life to sell to or buy from himself.

Under the old law there was nothing in the position of a tenant for life to prevent him from selling to or buying from the trustees; *Howard* v. *Ducane*, T. & R. 81; *Dicconson* v. *Talbot*, 6 Ch. 32; *Vaizey on Settlements*, 588. But under the Settled Land Act the case is different, as the tenant for life would in either case be both vendor and purchaser (see 33 Sol. J., pp. 3, 23); this, however, is now provided for by the Act of 1890, s. 12, under which where a tenant for life is in such a twofold position (on a sale, exchange, or partition), the trustees are to stand in his place for the purpose of exercising the statutory powers.

Powers of Act cumulative.

By s. 56, the powers of the Act are made cumulative, and any concurrent powers contained in the settlement and exercisable by the tenant for life or the trustees, are kept alive, but so that in case of conflict the provisions of the Act are to prevail; and the consent of the tenant for life is made necessary to the exercise by the trustees of the settlement of any such power; but by the Act of 1884, s. 6 (2), where there are two or more tenants for life, the consent of one only is necessary. As to the effect of s. 56, see *Re Duke of Newcastle*, 24 Ch. D. 129; *Clarke* v. *Thornton*, 35 Ch. D. 307.

Apportionment of purchase-money

S. 34 contains a provision (similar to that in the Lands Clauses Consolidation Act, 1845, s. 74, and the Settled Estates Act, 1877, s. 37), enabling the trustees or the Court, in the case of a sale of a lease, or of

on sale of lease or reversion.

a reversion expectant on a beneficial lease, to deal with the purchase-money so as to adjust the rights of the beneficiaries, and prevent the tenant for life being injured in the former case, or benefited in the latter by the sale: see *Cottrell* v. *Cottrell*, 28 Ch. D. 628. Where in such a case the settlement contains an express power of sale, with the usual provisions for reinvestment of the purchase-money, not providing for this, it would be to the interest of the tenant for life (having regard to that enactment), in the case of a lease to sell under the statutory power, and in the case of a reversion under the express power; in a case of *Willats* v. *Flint*, decided in chambers, where the property had been sold under the Act, it was considered that the Court was bound to apply s. 34, although not in terms directory, and although if the sale had been made under the express power, that provision would not have been applicable.

Notice to trustees before sale, &c.

The original Act contains a requirement (s. 45), that the tenant for life shall give one calendar month's notice by registered letter to each of the trustees, and also to their solicitor, if any is known to him, before making any sale, exchange, partition, or lease under the Act, or a contract for the same; with a proviso that "at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement" (see *Re Garnett*, 25 Ch. D. 595, where such an intention was inferred in the case of a settlement before the Act authorising a sole trustee to act generally); but a person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of the notice. This requirement as to notice having proved exceedingly troublesome has been mitigated by the Amendment Act of 1884, s. 5, which provides that the notice may be a general one (reversing *Re Ray*, 25 Ch. D. 464); and enables any trustee to waive notice, either in the particular case or generally; and to accept less than a month's notice; but it is not clear whether a sole trustee, notice to whom would not have been sufficient under the original Act, can waive notice. Power to waive notice to the solicitor of the trustees is no doubt implied, otherwise the provision would be nugatory. The necessity for notice in the case of ordinary rack-rent leases is dispensed with by the Act of 1890, s. 7. The notice, unless waived, should be given, although the trustees are consenting parties. The requirement as to notice is not of course to prevent clashing where the trustees have concurrent powers, as such powers are by s. 56 (as amended by the Act of 1884, s. 6), not exerciseable without the consent of the tenant for life, or one of several, but to enable the trustees to intervene in case of an improper dealing, for which purpose the tenant for life is by the Act of 1884, s. 5 (2), required on request to furnish particulars of the proposed dealing; and any question could no doubt be referred to the Court under s. 44 of the Act of 1882. The want of a proper notice does not affect a purchaser unless he has knowledge of the fact, at any rate if he ascertains that at the time of completion there are trustees to whom notice might have been validly given; *Duke of Marlborough* v. *Sartoris*, 32 Ch. D. 616 *Hatten* v. *Russell*, 38 Ch. D. 334; *Mogridge* v. *Clapp*, [1892] 3 Ch. 382, the case of a lease, where the lessee was held to be protected though there were no trustees (see the discussion in the judgments).

Act of 1884, s. 5, as to notice.

Purchaser —how affected by want of notice.

Infant tenant for life.

By s. 60, if the tenant for life is an infant, his powers under the Act may be exercised on his behalf by the "trustees of the settlement," and "if there are none," then by persons appointed by the Court on the application of the infant's guardian or next friend. If there are trustees of the settlement within the Act, whether appointed by the settlement or the Court, they are necessarily the persons to exercise the powers on behalf of an infant, and no other person can be appointed for the purpose (*Re Dudley*, 35 Ch. D. 338); and if such an appointment is made, inasmuch as the powers of the person appointed would, if trustees were afterwards appointed, *ipso facto* cease, it follows that there cannot in that case be trustees to whom notice may be given under s. 45, and to receive the purchase-money under s. 22; and the purchase-money must therefore be paid into Court (*Re Dudley, ubi sup.*). The proper course where that is not desired is simply to get trustees appointed, who will be able, without express authority from the Court, to sell under s. 60, and give a discharge for the purchase-money under s. 22; but if an action be pending, the sanction of the Court to a sale must be obtained (either generally or by confirming a provisional contract): see *Re Price*, 27 Ch. D. 552; *Re Staines*, 33 Ch. D. 172; and a sale out of Court may be authorised (*Re Price, ubi sup.*).

Infant absolutely entitled.

By s. 59, the provisions of the Act are extended to the case of an infant "seised of or entitled in possession," so that the infant is to be deemed tenant for life thereof; and the provisions of s. 60 are therefore applicable. This would apply to an infant seised in fee of freeholds or copyholds, or absolutely entitled to leaseholds. The case where the estate of the infant is subject to a gift over on death under age or otherwise comes under s. 58 (i, ii.), coupled with s. 60; see *Re Morgan*, 24 Ch. D. 114. In applying the Act to the case of an infant absolutely entitled, the instrument under which his title arises (or, where he takes by descent, under which his ancestor's title arises), although not coming within the definition in s. 2, must necessarily be deemed the settlement. The similar question as to a tenant by the curtesy has been dealt with by the Act of 1884, s. 8. The Settled Estates Act, 1877, had previously, by the Conv. Act, 1881, s. 41, been extended to infants seised in fee; see as to that enactment, *Liddell* v. *Liddell*, 52 L. J. Ch. 207, 31 W. R. 238; *Re Sparrow*, [1892] 1 Ch. 412.

Tenant for life married woman.

In the case of the tenant for life being a married woman, by s. 61, if she is entitled for her separate use under the old law, or as her separate property under the Married Women's Property Act, 1882, she can act alone as a *feme sole;* and a restraint on anticipation is no impediment (s. 61 (6)); otherwise, *i.e.*, where she was married and the settlement was made prior to 1883, and she is not entitled for her separate use, she and her husband together have the powers of a tenant for life, and his concurrence is necessary. If the married woman is an infant, the effect of s. 61 (4), is to make the provisions in s. 60 as to infants applicable, with the modification that the husband must concur where his concurrence would have been necessary if the wife had been of age.

Tenant for life lunatic.

In the case of the tenant for life being a lunatic so found by inquisition, the powers are exercisable by the committee of the estate,

s. 62: see *Re Ray*, 25 Ch. D. 464; *Re Gaitskell*, 40 Ch. D. 416. The Act does not provide for the case of a lunatic not so found. But as to leasing powers see the Lunacy Act, 1890, 53 Vict. c. 5, ss. 120 (*h*), 122; and note that that Act applies whether the lunatic is so found or not, see s. 116.

Settlements by way of trust for sale.

The original Act applied to settlements (past or future) by way of trust for sale (s. 63), whether the proceeds of sale are liable to be reinvested in land or not (the marginal heading of the section is in this respect erroneous); the powers of the Act being in that case vested in the tenant for life (as defined by that section) of the proceeds of sale or the rents until sale, or in the case of concurrent owners (as so defined) in such persons together; the clause was held not to apply to a deferred trust for sale (*Re Horne*, 39 Ch. D. 84); but see now the Act of 1890, s. 16, *supra*. As to the effect of a sub-settlement, see *Re Earle*, 24 Ch. D. 144. The enactment in s. 63 having been found very inconvenient by reason of its necessitating (by s. 56) the consent of the statutory tenant or tenants for life to sales and other dealings by the trustees under the trust, has been amended by the Act of 1884, which by s. 6 (1), dispenses with the necessity for any such consent, and by s. 7, provides that the powers conferred by s. 63 are not to be exercised without the leave of the Court; and the Court may, on the application of the tenant or tenants for life, in any case in which it thinks fit, give leave to exercise all or any of the powers, and the order is to name the person or persons to whom leave is given, who shall be deemed the proper person or persons (as to giving this leave see *Re Harding*, [1891] 1 Ch. 60); and so long as the order is in force the powers vested in the trustees for the like purpose are suspended, subject to a provision requiring the order to be registered as a *lis pendens* for the protection of persons dealing with the trustees.

Act of 1884 as to settlements by trust for sale.

See the Rules of December, 1882, under the Act, in the Supplement to the Annual Practice.

Settled Estates Act, 1877.

The Act leaves little occasion for recourse to the powers of the Settled Estates Act, 1877, though applications under that Act are still occasionally made. It is also to a large extent acted on so as to supersede sales, &c., under express powers, which are only resorted to in exceptional cases; but in the case of trusts for sale, especially under wills, convenience is usually in favour of the trustees acting.

XVIII.

CONVEYANCE *of* FREEHOLDS *by* TENANT FOR LIFE *under the* SETTLED LAND ACTS. ADAPTED *to a sale by* AUCTION *or* PRIVATE CONTRACT. VARIATIONS *where the* TRUSTEES *are appointed by the* COURT, *where the* PURCHASE MONEY *is paid into* COURT, *for a* SALE *of the* MANSION HOUSE *or land occupied with it, and where a* RIGHT OF WAY *is* RESERVED (*a*). PREC. XVIII.

Parties, A., *tenant for life*, 1; B. & C., *trees*, 2; D., *pchaser*, 3; WHAS by an indre of settlemt dated, &c., *or*, "the will dated, &c., & proved on, &c., of X., of, &c., deced," the hds hinafter descd & expd to be hby assured [togr with other hds] were conveyed & settled to the use of the sd A. for his life, *or*, "to uses under wch the sd A. is now tenant for life in posson thof," *or*, "is now benefly entled to the posson or rect of the rents & profits thof durg his life," *or set out the limons down to limon to A.*, "with remrs over," & the sd settlemt [will] contains a power of sale of the sd hds & premes thby settled exercisable by the sd trees or the survors or survor of them with the consent &c., *or*, "wch is now vested in the sd B. & C. with the consent of the sd A.," *or*, "& the sd B. & C. & the survors & survor of them were thby apptd trees & tree thof for the pposes of the Settled Land Acts, 1882 to 1890," *& add any further recitals necy to show that A. is tenant for life or limd owner, & B. & C. trees within the Acts* (*b*); AND WHAS the sd

citals.

Settlement

Agreement.

(*a*) See note on the Settled Land Acts, p. 501 *et seq.*, and as to the power of the tenant for life to convey, see p. 506. If the money is paid into Court the trustees need not be parties, but if it is paid to them, they usually are.

(*b*) If the settlement contains no appointment of trustees within the meaning of the Act, add, "AND WHAS at the date of the order next hinafter recited there were not any trees of the sd settlemt [will] for the pposes of the Settled Land Acts,

Variation where trustees are appointed by the Court.

PREC. XVIII. A. by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, has agrd with the sd D. for the absolute sale to him of the sd hds hinafter descd & the inhance thof in fee simple in posson [subjt to such reservon of a rt of way as is hinafter contd] for the sum of £—— (*a*);

1882 to 1890;" AND WHAS by an order of the Chancery Divon made by Mr. Justice —— on the —— day of —— on the applicon of the sd A., the sd B. & C. were appted & they now are the trees of the sd indre of settlemt [will] for the pposes of the sd Acts. See the Rules under the Act, Form XIX.; and above, p. 508, note.

Variations for sale of mansion-house, &c.

(*a*) If the principal mansion house, or land occupied with it is sold with the consent of the trustees, say, "AND WHAS the sd A., by virtue, &c., *as above*, has, with the consent of the sd B. & C., agrd, &c." If the sale is with the approval of the Court, add, "AND WHAS by an order of the Chancery Divon made by Mr. Justice —— on the —— day of ——, the sd A. & his succors in title was & were authorised, &c.," recite order giving general authority to sell the mansion house, &c., see rules under the Act, Form VI.; or if a conditional contract was entered into, "AND WHAS by a memdum of agrmt dated, &c., & expd, &c., the sd A. agrd with the sd B. subjt to the approval of the Chancery Divon being obtained as hinafter mentd for the sale, &c.; AND WHAS by an order of the Chancery Divon made by Mr. Justice —— on the —— day of ——, the sd condonal contract was approved & the sd A. & his succors in title was & were authorised to carry the same into effect."

Variation where purchase money paid into Court.

A general authority to sell according to the form in the rules is of course to be preferred to a conditional contract confirmed by the Court, as the contract in the latter case becomes part of the title. If the money is paid into Court, add, "AND WHAS the sum of £—— was pd by the sd D. to the sd A. by way of deposit on the contract for the sd sale & pchase being entd into; AND WHAS in psuance of an order or orders of the Chancery Divon in that behalf the sum of £——, being the amt of the sd deposit less the sum of £—— deducted for the costs of paying in the same was on the —— day of —— pd by

[*Recital introductory to covt for prodon of deeds*, p. 411]; PREC. XVIII.
NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt (*b*) & in conson of the sum of £—— now pd by the sd D. by the diron of the sd A. to the sd B. & C. as such trees as afsd (the rect whof they the sd B. & C. do hby acknowe (*c*), & the paymt whof in mner afsd the sd A. doth hby acknowe), the sd A. **as benefl owner** by virtue of the powers vested in him by the Settled Land Acts, 1882 to 1890, & of every or any other power enablg him in this behalf (*d*) doth hby grt & convey unto the sd D., *pcels*, p. 415 *et seq.*, *Habendum to D. in fee, in usual form* (*e*): To Witnesseth.

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the sd A. into Ct to the credit of, &c., AND the sum of £—— being the balce of the sd purchase-moy of £——, after deductg the sd deposit & the sum of £—— in respt of the costs of the paymt of such balce into Ct, was on the —— day of —— pd by the sd D. by the diron of the sd A. into Ct to the acct afsd." See the rules under the Act, Form IX.

As to recitals of notices.

As purchasers dealing *bonâ fide* are protected by s. 45 of the Settled Land Act, 1882, a recital that the notices required by that clause have been given should not be inserted, but it should be made to appear that there were trustees to whom notice might have been given under that section, or who might have waived notice under the Settled Land Act, 1884, s. 5. If the settlement were since the Act and contains a provision that notices under that section shall not be necessary, this may be recited.

(*b*) If the money is paid into Court, say, "in conson of the respive sums of £—— & £—— makg togr £—— so pd into Ct as afsd by the sd D. (the paymt whof in mner afsd the sd A. doth hby acknowe) the sd A., **as benefl owner**, &c."

(*c*) If the trustees are not made parties, say, "the rect whof is intd to be acknowed by a memdum endorsed on or written at the foot of these psnts & signed by the sd B. & C., & the paymt whof in mner afsd the sd A. doth hby acknowe."

(*d*) For a mansion house, &c., say, "with the consent (hby testified) of the sd B. & C.," or, "& with the approval of the Chancery Divon as appears by the hinbfe recited order of the —— day of ——."

(*e*) Under the Conv. Act, 1881, s. 63, the conveyance includes all the

PREC. XVIII.

Habendum to purchaser.

HOLD the same premes UNTO & TO THE USE of the sd D., his hrs & assns (*a*), subjt to the leases & tenancies affectg the sd respive premes : [*Add if required, provo restrictg A.'s implied covts for title*, p. 452, *form* II. ;] [*Acknowemt & undertakg by A. or acknowemt by B. & C., as the case may be, as to munimts*, p. 459.] IN WITS, &c.

[*Schdle of Munimts.*]

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estate, legal or equitable, which the vendor has power to convey, *i.e.*, which is the "subject of the settlement," see p. 432, note.

(*a*) The words "dischged from all the limons, powers & provons of the settlemt, & from all estes, intts, & chges subsisting or to arise thereunder," (following the language of the Settled Land Act, 1882, s. 20,) are sometimes inserted here, but are of course unnecessary.

As to succession duty.

On a conveyance under the ordinary express power in a settlement effected by revocation and appointment of the use, or under the Settled Estates Act, 1877, s. 2, which has a similar operation, the liability to the succession duty (or the estate duty under 52 Vict. c. 7, s. 6), payable under the settlement, is shifted from the land to the purchase money and the investments thereof (*Re Warner*, 17 Ch. D. 711), and the effect of a conveyance under the Settled Land Act, as by s. 20 it passes the land discharged from the limitations of the settlement, is the same, and is so treated in practice, unless the duty has become due before the sale ; but where the liability to the duty arose under an instrument prior to and overriding the settlement the case is different, and the decision in *Dugdale* v. *Meadows*, 9 Eq. 212, 6 Ch. 501, is clearly unsustainable : see 2 Dav. Prec., pt. 1, p. 313 ; unless, indeed, the case could be dealt with as one of a "compound" settlement, see above, p. 502, note.

Reservation of right of way.

Where a right of way is reserved to go with the settled estate, the habendum will be, "UNTO the sd D. & his hrs, *subjt to leases, &c.*, TO THE USE that the sd A. & his succors in title under the hinbfe recited indre of settlemt [will] [*if the legal este is in the trees, add,* & the sd B. & C., their hrs & assns], & his & their tenants shl & may for ever hrafter have full & free rt, &c.," *see* pp. 421—422. As to the creation of easements by limitation of the use, see the Conv. Act, 1881, s. 62 above, p. 425, note.

For a form of consent to the sale by an incumbrancer on the life estate of the tenant for life, *see* DIRECTION AND CONSENT.

XIX.

CONVEYANCE *of* LEASEHOLDS *by* TENANT FOR LIFE *under the* SETTLED LAND ACTS, *where the* SETTLEMENT *was by way of* TRUST *for* SALE (*b*). PREC. XIX.

PARTIES, A., *tenant for life or limd owner*, 1; B. & C. *trees*, 2; D., *pchaser*, 3; *Recite the lease*, p. 393, *& devolon of title, if any, to the settlor*, p. 395: AND WHAS under or by virtue of an indre, dated, &c., & expd, &c. [& of anor indre bearg even date thwith & expd, &c.], *or*, "the will of X., deced, dated, &c., & proved, &c.," the sd hds & premes became & are now vested in the sd B. & C., the psnt trees of the same indre [respive indres] *or*, "will," upon trust at any

Recitals.

Settlement or will (*c*).

(*b*) See p. 501 *et seq.*, note, and as to trusts for sale, p. 512. For the variations where trustees are appointed by the Court for the purposes of the Act, where the purchase-money is paid into Court, and for a mansion house, &c., see the last Precedent, and the notes thereto.

(*c*) If the land was purchased under the usual power in a marriage settlement or will of personalty, the recital may be, "AND WHAS by an indre dated, &c., & expd, &c., *the convce*, the hds hinafter descd & intd to be assured were conveyed to the use of the sd B. & C., their hrs & assns, upon the trusts by a certn indre of settlemt, dated, &c., & expd, &c., *or*, 'the will of X., deced, dated, &c., & proved, &c.' decld concerng the hds thby authorised to be pchased with the trust moys thrunder or such of the same trusts as were then subsistg & capable of takg effect, being (amongst other trusts) for the sale of the sd hds by the sd trees with the consent of the sd A., & for paymt of the rents & profits thof until sale to the sd A. durg his life," or in the not uncommon case of the purchase having been made partly out of the husband's and partly out of the wife's money, "for the paymt of the rent & profits thof until sale as to pt to the sd A. durg his life, & as to the other pt to the sd D. durg her life for her separate use witht power of anticipon." In the latter case both A. and D. would be necessary consenting parties.

Variation where land has been purchased under power to invest in land.

PREC. XIX.

time with the consent in writg of the sd A. to sell the same or any pt or pts thof, & the sd A. is benefly entled to the posson or rect of the rents & profits of the same premes durg his life or until the same shl be sold, *or, recite the material pts of the deed or deeds of settlemt or will at length, & any subseqt events showg that A. is a limd owner, & B. & C. are trees for sale within the Act. Order of Ct under the Settled Land Acts authorisg A. to exercise the powers of the*

Agreement.

Acts, see p. 514: AND WHAS the sd A., by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, & the hinbfe recited order of Ct, has agrd with the sd D., &c., *recital of agrmt for sale*, p. 407, *form* II.; [*Recital introductory to covt for prodon of deeds, &c.*, p. 411]: NOW

Witnesseth.

THIS INDRE WITNETH that in psuance, &c., *conson, & rect, as in last Precedent*, the sd A., **as benefl owner** by

Assignment.

virtue, &c., *as in last Precedent*, doth hby assn & convey unto the sd D., *pcels*, p. 419, *form* XVII.; *Habendum*, p. 436, *form* XIV. [*Provo, if required, restrictg A.'s implied covts for title*, p. 452, *form* II., *mutatis mutandis*]; [*Covt, if required, by D. with B. & C. to pay rent, &c.*, p. 461, *form* I.]: [*Acknowemt & undertakg by A., or acknowemt by B. & C. as to munimts*, p. 459.] IN WITS, &c.

[*Schdle of Munimts.*]

XX.

PREC. XX.

CONVEYANCE *of* COPYHOLDS *and* GRANT *of a* RIGHT OF WAY *over adjoining freeholds under the* SETTLED LAND ACTS, *by a tenant for life under a will containing a* CHARGE *of* DEBTS (*a*).

Recitals.

PARTIES, A., *tenant for life*, 1; B. & C., *trees & exs*, 2; D., *pchaser*, 3. WHAS X., of, &c., deced, by his will, dated, &c.,

As to effect of charge

(*a*) See note on the Acts, p. 501 *et seq.* and the variations to Precedent XVIII. Where the property is subject, under the will of the settlor (as

after bequeathg certn legacies & chging his debts & legacies on his real este in aid of his psonal este, devised his freehd estes & hds, includg the hds over wch a rt of way is intd to be hby grted, to certn uses under wch the sd A. is tenant for life in posson thof, & the sd B. & C. are trees of the sd will with a power of sale over the sd hds & premes, exercisable with the consent of the sd A., & the sd testor devised his copyhd hds includg the copyhd hds intd to be hby assured to the use of the sd B. & C., & their hrs upon the like trusts, & subjt to the like powers & provons as are in & by the sd will decld & contd of & concerng the sd freehd hds, or as near thto as the different tenure of the ppty wd admit, & the sd testor appted the sd B. & C. exs of his sd will: *Death & probate*, p. 402; *admittee of trees*, p. 386, *form* XI. (*b*), AND WHAS the sd A., by virtue of the

PREC. XX. Settlement.

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in this case) or a prior owner, to an express or implied charge of debts or legacies, so as to create or imply a power of sale or mortgage in the executors or trustees to raise money for the purpose (as to which see 2 Dav. Prec., pt. 2, p. 471 *et seq.* note), it has to be considered whether the tenant for life can make a good title without the concurrence of the executors or trustees. If the settlement was made by the will itself it is conceived that being a floating charge it would be overreached by the conveyance to the purchaser under the S. L. Act, 1882, s. 20 (2); but if the will was prior to the settlement, this would not be so, see s. 20 (2, i). It is necessary in the latter and better in the former case that the executors or trustees should join in the conveyance to confirm the sale and give a discharge for the purchase money. The purchase money should in either case be paid to the executors or trustees of the will, which is in accordance with ss. 21 and 22 of the Act, as capital money is applicable thereunder in the first place in payment of claims paramount to the settlement, and subject thereto is payable to the trustees of the settlement; and their receipt is the only proper discharge to the purchaser even though the money is not in fact wanted to pay debts or legacies.

of debts or legacies.

(*b*) As to the power of the tenant for life to convey copyholds, see p. 501 *et seq.* note; and as to the power to sell an easement over the settled estate, see the Act of 1882, s. 3 (i). It is conceived that an easement over freehold land may be granted so as to be annexed in enjoyment to copyholds, the legal effect being the same as if it had been acquired by prescription. The recitals should show in whom the legal estate is vested. If the trustees of a will have not been admitted, and the tenant for life sells under the Settled Land Acts, only one fine is payable; *Re Naylor*, 34 Ch. D. 217.

As to conveyance of copyholds.

PREC. XX.

powers vested in him under the Settled Land Acts, 1882 to 1890, has agrd with the sd D. for the sale & convce & grt to him of the copyhd hds hinafter descd & intd to be hby assured, & the inhance thof in posson accdg to the custom of the manor, & also of the rt of way hinafter expd to be hby grtd, free from incumbces, for the sum of £——: AND WHAS the sd B. & C., in whom as exs or trees of the sd will a power of sale or mtge of the hds thby devised for raisg moy for paymt of the debts & legacies of the sd testor is considered to be vested by virtue of his will, have at the reqt of the sd A., & to perfect the title of the sd D., agrd to join in these psnts for the ppose of confirmg the sd sale, & givg a dischge for the sd pchase moy as hinafter appears; [*Recital introductory to covt for prodon of deeds*, p. 411]: NOW THIS INDRE, &c., *pchase moy pd to B. & C.* "as exs & trees of the sd will," see *Precedent* XVIII., the sd A., as **benefl owner**, by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, & of every other power enablg him in this behalf, doth hby grt & convey, & the sd B. & C. as such **exs & trees** as afsd, do hby grt & confirm unto the sd D., *copyhd pcels*, p. 415 *et seq.*; AND ALSO full & free liberty for the sd D., his hrs & assns, the owners & occupiers of the sd copyhd premes hby assured, *continue as at* p. 421, *form* XXVIII., TO HOLD the same respive premes UNTO & TO THE USE of the sd D., his hrs & assns, but as to the sd copyhd premes accdg to the custom of the sd manor, & by & under the rents, fines, suits, & services due & accustomed for the same, & as to the sd rt of way to the intent that the same may be annexed in enjoymt to the sd copyhd premes: [*Acknmt & undertakg as to munimts*, p. 459]. IN WITS, &c.

Agreement of executors and trustees to join.

Witnesseth.

Grant.

Right of way.

Habendum.

[*Schdle of Munimts.*]

XXI.

CONVEYANCE *under the* SETTLED LAND ACTS *of* FREEHOLDS *belonging absolutely to an* INFANT (*a*). PREC. XXI.

PARTIES, A. & B., *the psons apptd by the Ct to sell & convey or the trees of the settlemt*, 1; C., *pchaser*, 2. WHAS K. an infant under the age of twenty-one yrs is seised of the hds hby assured wch form pt of the —— este hinafter mentd for an este in fee simple in posson free from incumbces under or by virtue of an indre, &c., *or*, "the will of, &c.," *or*, "as hr at law of —— who died seised thof intestate on, &c." AND WHAS at the date of the order hinafter recited there were no trees with power of sale over the sd este or orwise for the pposes of the Settled Land Acts, 1882 to 1890, in relon thto; AND WHAS by an order of the Chancery Divon made on the —— day of —— by Mr. Justice —— in the mre of, &c., it was ordered that the power of sale & convce & other powers conferred upon tenants for life by the Settled Land Acts, 1882 to 1890, might be exercised by the sd A. & B. on behalf of the sd K. durg his minority over or in relon to the —— este, & it was further ordered that on a sale of any pt of the sd este the pchase moy shd be pd into Ct to the credit of, &c. (*b*); AND WHAS the sd A. & B.

Recitals.

Title of infant.

Order appointing persons to sell.

(*a*) See p. 501 *et seq.*, note; and as to infants, p. 511.

(*b*) As to the necessity for payment into Court in this case, see *Re Dudley*, 35 Ch. D. 338; p. 511, note. If the trustees have a power of sale under the settlement or will, they may sell under that power or under the statutory power without any order of the Court; and it will probably be a matter of indifference which course is adopted, unless it be with reference to the re-investment of the purchase money. If the sale is made under the statutory power the following recital should be added: "And by the sd indre [will] a power of sale of the sd hds is vested in the sd A. & B. as the psnt trees thof durg the minority of the sd K.," or, "the sd A. & B. were appted trees of the sd hds for the pposes of the Settled Land

PREC. XXI.

have, by virtue of the powers conferred on them by the sd recited order agrd with the sd C. for the absolute sale to him of the hds hby assured & the inhance thof in fee simple in posson for the sum of £——; [*Recital introductory to covt for prodon of deeds*, p. 411;] *recital of diron for paymt into Ct & paymt accdly, see* p. 514: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— now pd by the sd C. into Ct as afsd, the sd A. & B., as trees, by virtue of the powers conferred on them by the Settled Land Acts, 1882 to 1890, & under the sd order of the —— day of —— & by virtue of every other power enablg them in this behalf, do hby, on behalf of the sd K., grt & convey unto the sd C., *Pcels*, p. 415 *et seq.*, TO HOLD the same premes UNTO & TO THE USE of the sd C., his hrs & assns: AND THE sd A. & B. as well on their own respive behalf as on behalf of the sd K. (*a*) hby acknowe the rt of the sd C. to the prodon of the muniints mentd in the schdle hto (wch are in the custody of the sd K. or of the sd A. & B. in his rt) & to delivery of copies thof. IN WITS, &c.

Witnesseth.

Grant.

Habendum to purchaser in fee.

Acknowledgment as to deeds.

[*Schdle of Muniints.*]

Acts, 1882 to 1890." If the sale is made by the trustees under the Act, they can sell the mansion house, or land held with it, of their own authority and without an order of the Court.

(*a*) There may be questions as to who has in law the custody of the deeds belonging to the infant in this case, and as to the legal effect of the acknowledgment: see p. 455, note. The above form may obviate questions as far as the case admits.

XXII.

CONVEYANCE *by the* EXECUTORS *and* DEVISEES (*b*) *of a* SECOND *mortgagee under a power of sale, with the concurrence of the* FIRST *mortgagees, of* FREEHOLDS *and* COPYHOLDS *to the uses of a* STRICT SETTLEMENT *on a purchase by a* TENANT FOR LIFE *under the powers of the* SETTLED LAND ACTS (*c*). PREC. XXII.

PARTIES, A., B., & C., *first mtgees,* 1; D. & E., *exs & devisees of second mtgee,* 2; F., *tenant for life under*

(*b*) The mortgagee is supposed to have died before 1882, otherwise the legal estate in the freeholds would vest in the executors; see p. 141, note. The executors and devisees of mortgage estates (under the old law) would generally be the same persons.

(*c*) See note on the Acts, p. 501 *et seq.* Capital money arising under the Act may be invested (under s. 21) subject to any claims properly payable thereout, and to any special object for which it was raised:— 1. In securities authorised by the settlement or the general law for the investment of trust moneys, *plus* such railway debentures or debenture stock as therein mentioned; as to which see now the Rule of Court of November, 1888, and the Trust Investment Act, 1889. As to deferring the purchase of land when directed by the settlement, and investment in the meantime under the Act, and as to debentures issued under the Local Loans Act, 1875, see *Re Maberly,* 33 Ch. D. 455. 2. In discharge of incumbrances, whether affecting the whole or a part of the settled estates; *Re Chaytor,* 25 Ch. D. 651. As to extraordinary tithe, see Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), ss. 5 & 6. 3. In payment for improvements (see *Re Houghton,* 30 Ch. D. 102; *Re Stamford,* 43 Ch. D. 84; *Re Munday,* [1891] 1 Ch. 399), including improvements under the Agricultural Holdings (England) Act, 1883 (46 & 47 Vict. c. 61), s. 29, and the redemption of rent charges created to pay for improvements; see the Settled Land Acts (Amendment) Act, 1887, 50 & 51 Vict. c. 30; *Re Egmont,* 45 Ch. D. 395 (disapproving *Re Sudeley,* 37 Ch. D. 123); *Re Newton,* 61 L. T. 787. 4. In payment for equality of exchange or partition. 5. In the enfranchisement of copyholds or freeholds subject to the settlement. 6. In the purchase of the reversion of leasehold land so subject. 7. In the purchase of freehold, copyhold, or leasehold land (the latter having 60 years unexpired), with or without the minerals (but not out of England unless authorised by the settlement, s. 23). 8. In the purchase in fee, or for 60 years or more, of minerals and easements convenient to be held with the settled land. 9. In payment to any person absolutely entitled; see *Cookes* v. *Cookes,*

Investment of capital money under Settled Land Acts.

PREC. XXII. Recitals. *settlemt*, 3; G. & H., *trees of settlemt*, 4. *Recite mtge of freehds & copyhds by X. to A., B., C., & K.*, p. 388, *on*

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34 Ch. D. 498. 10. In payment of costs; see *Re Beck*, 24 Ch. D. 608; as to extra costs occasioned by incumbrances on the life estate, see *Cardigan* v. *Curzon-Howe*, 40 Ch. D. 338, 41 Ch. D. 375; and as to costs of an abortive sale, see *Re Smith*, [1891] 3 Ch. 65. 11. In any other mode in which sale moneys are applicable under the settlement.

The provisions for investment apply to any money paid into Court under any statute (s. 32), or in the hands of trustees (s. 33), which is liable under a settlement to be laid out in the purchase of land; see as to the latter section, *Re Mackenzie*, 23 Ch. D. 750; *Re Tennant*, 40 Ch. D. 594; *Re Mundy*, [1891] 1 Ch. 399.

Powers of tenant for life. The investment is to be made, if the money is in the hands of the trustees, by direction of the tenant for life (see *Cookes* v. *Cookes*, *ubi sup.*), and if in Court, on his application or that of the trustees, s. 22 (2, 3). The effect of the above provisions in the Act is to make the tenant for life (and not the trustees) the proper person to enter into the contract of purchase; but if the money is in Court, the contract should be subject to being sanctioned by the Court.

Mode of conveyance, By s. 24 (1, 2, 3), freehold land acquired by purchase, &c., is to be conveyed to the uses, &c., which, under the settlement or by the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase charges or powers of charging; and copyhold, customary, or leasehold land is to be conveyed to and vested in "the trustees of the settlement" (as defined by the Act), on trusts, &c., corresponding as nearly as the law and the circumstances permit, with the uses, &c., to which freehold land is to be conveyed as aforesaid, subject to a provision preventing the beneficial interest in land held by lease for years from vesting absolutely in a tenant in tail dying under 21.

as to charges, By s. 24 (4, 5, 6), provision is made (supplementary to s. 5), for enabling the purchased land to be made a substituted security for any charge previously affecting any part of the settled land which has been sold, &c.

mines, easements, &c. By s. 24 (7), these provisions are to apply as far as may be to mines and minerals, and to easements and rights over or in relation to land. As to the grant of easements and rights by way of use, see the Conv. Act, 1881, s. 62, *ante*, p. 312 note, p. 336 note.

Duty of trustees. The trustees should, of course, be parties to the conveyance; but they are bound to make the investment according to the direction of the tenant for life, and are protected by s. 42 of the Act from responsibility as regards the contract, the title, or the conveyance (provided the latter purports to convey the land in the proper mode), or for paying the purchase money according to the direction of the tenant for life. It does not, therefore, seem to concern them to do more than satisfy themselves that the conveyance on its face appears to convey the property

jt acct, settg out jt acct clause (if any) (*a*), *omittg the covt for paymt; condonal surrender by X. to A., B., C., & K.*, p. 388; *death of K.; second mtge of freehds & copyhds by X. to Y., subjt to the prior mtge, settg out the power of sale, if any, & subsidiary provons as in Precedent* XVI., *with the exception of the provon as to the hr of the mtgee joing in the convce; condonal surrender by X. to Y.*, p. 388; *will of Y. apptg D. & E. exs & devisg mtge estes to them; death of Y. & probate*, p. 402; *strict settlemt* (*under wch F. is tenant for life in posson*, p. 393); & in the sd indre is contd a power of sale of the hds thrin comprd, to be exercised by the trees or tree for the time being of the sd settlemt at such reqt or at such discron as thrin mentd, with a diron for the investmt of the moys arisg from any such sale in the pchase of freehd or copyhd hds to be conveyed to the uses or upon the trusts thof as thrin mentd, *or, if so*, "& the sd G. & H. were thby apptd trees thof for the pposes of the Settled Land Acts, 1882 to 1890;" & in the sd indre now in recital is contd a power for the apptmt of new trees thof, in the place of trees dying or orwise as thrin mentd: AND WHAS the sd I. died on, &c.: AND WHAS by an indre, dated, &c., in exercise of the sd power in that behalf in the hinbfe-recited indre of settlemt contd, the sd H. was appted to be a tree thof in the place of the sd I.: AND WHAS certn portions of the hds comprd in the sd indre of settlemt have lately been sold: AND WHAS the sd D. & E., as exs of the sd Y., & in exercise of the power of sale vested in them under or by virtue of the sd indre of mtge of,

Settlement.

Death of trustee.

Appointment of new trustee.

Sale of settled estates.

Agreement for sale.

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comprised in the contract in the manner proper to make it subject to the settlement.

For a form of direction by the tenant for life to the trustees to pay the purchase money and costs, see *infra*, DIRECTION AND CONSENT.

(*a*) This clause would, in a mortgage since 1881, be unnecessary, provided the fact that the mortgage was on joint account appears; see the Conv. Act, 1881, s. 61. On the other hand notwithstanding the insertion of the clause the joint account may, as between the mortgagees, be rebutted by evidence; *Re Jackson*, 34 Ch. D. 732; but this could not affect a purchaser without notice.

As to joint account mortgages.

PREC. XXII.

&c., [& the statute in that behalf] have agrd to sell, & the sd F., as tenant for life under the sd indre of settlemt by virtue of the powers of the Settled Land Acts, 1882 to 1890, has agrd to pchase the freehd hds hby grted in fee simple in posson & the copyhd hds hinafter covted to be surrendered, & the inhance thof in posson, accdg to the custom of the sd manor, for the sum of £——, wch the sd F., by virtue of the sd Act, has directed to be pd by the sd G. & H. out of moys in their hands arisg from such sale or sales as afsd, & wch are liable to be invested under the provons of the sd Act, & the sd F. has also directed that the sd pchased hds shl be conveyed & assured in mner hinafter appearg (*a*), *Recital of amt due to A., B., & C., & agrmt that they shd be pd off & concur*, pp. 410, 411 : AND WHAS no admittce eir of the sd A., B., & C., or of the sd Y. or the sd D. & E., to the sd copyhd hds or any pt thof, has taken place psuant to the sd respive hinbfe recited condonal surrenders : AND WHAS satisfon is intd to be forthwith entd on the sd condonal surrender to the use of the sd A., B., & C. : *Apportionmt of pchase-moy for ad valorem duty as to copyhds*, p. 411 : NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £——, *apportioned pt of pchase-moy for freehds*, pd by the sd G. & H. to the sd A., B., & C., by

No admittance to copyholds.

Satisfaction to be entered up.

Witnesseth.

(*a*) The recitals of the settlement, and the dealings under it may be shortened as at p. 393, Form XXXIV., or may be omitted altogether, in which case the introductory recital will be as follows :—"AND WHAS the sd D. & E., &c., *as in the text*, have agrd to sell, & the sd F. as tenant for life, under an indre dated, &c., being a settlemt of certn estes situate, &c., *as in text*," the purchase money being directed to be paid "by the sd G. & H., out of moys in their hands, being capital moys under the sd settlemt arisg or liable to be invested under the provons of the sd Acts."

Short recital of purchaser's settlement.

It may, however, be necessary sometimes to recite the limitations of the settlement, and the source from which the purchase money is derived, in some detail, to show the uses to which the purchased property should be conveyed.

the diron as well of the sd D. & E. (*b*) as of the sd F. (the rect of wch sum of £—— the sd A., B., & C. do hby acknowe as in full dischge of all ppal moys & intt owing to them on the secy of the hinbfe recited indre of, &c.) & in conson of the sum of £——, *balce of apportioned pchase-moy for freehds*, pd by the sd G. & H. by the like diron to the sd D. & E. (the paymt & rect in mner afsd of wch sd sums of £—— & £——, makg togr the sum of £——, being the apportioned pt of the sd pchase-moy for the sd freehd hds, the sd D. & E. do hby acknowe), the sd A., B., & C., as mtgees, by the diron as well of the sd D. & E., as of the sd F., do resply hby grant & rele, & the sd D. & E., as mtgees, [in exercise, &c., *see* p. 495] do resply hby grt & confirm unto the sd G. & H., *freehd pcels*, p. 415, To HOLD the same premes UNTO the sd G. & H. & their hrs, *free from the mtges*, p. 434, "& from all rt or equity of redmon, & all claims & demands under the same resply:" *To the uses of the settlemt*, p. 435, *form* XI.: AND THIS INDRE ALSO WITNETH that in psuance, &c., & in conson of the sum of £——, being the apportioned pt of the sd pchase-moy for the sd coyhd hds, pd by the sd G. & H., by the diron of the sd F., to the sd D. & E. (the rect, &c.), the sd D. & E. as mtgees [in exercise, &c., *see* p. 496] do resply hby covt with the sd G. & H., their hrs & assns, that they, the sd D. & E., or their hrs, will forthwith, at the cost of the sd G. & H., their hrs or assns, procure themselves to be admitted tenants, psuant to the sd surrender of the —— day of ——, of, *copyhd pcels*, p. 415: And will immedly after such admittce at the like cost surrender the same hds, To the use of the sd G. & H., their hrs & assns, accdg to the custom of the sd manor, by & under the rents, fines, suits, & services due & of rt accustomed for the same, *free from the mtges, &c., as*

Grant of freeholds.

Habendum to trustees.

To uses of settlement.

Witnesseth.

Covenant to be admitted to copyholds,

and surrender.

To use of trustees.

(*b*) The payment to the first mortgagees should be made by the direction of the second mortgagees (the vendors), so as to protect the purchasers from being concerned with the state of the account between the first mortgagees and the mortgagor.

PREC. XXII. Upon trusts of settlement.

above, upon trusts of settlemt, see p. 435, *form* XI. [*Acknowemt as to munimts, if any, retained* (*a*)]. In wits, &c.

[*Schdle of Munimts*].

XXIII.

PREC. XXIII.

CONVEYANCE *of the* EQUITY *of* REDEMPTION *of* FREEHOLDS (*b*).

Recitals. *Parties*, A., *vendor*, 1; B., *pchaser*, 2. *Recite mtge in fee from A. to C.*, p. 387, *noticg the covt for paymt. State of* Contract. *mtge debt*, p. 410: And whas the sd B. has contracted with the sd A. for the absolute pchase of the sd —— & hds hby grted, & the inhance thof in fee simple, subjt to the hinbfe recited indre of mtge, & the sd ppal sum of £——, & the intt now due, & hrafter to accrue due thron, wch are to be borne & pd by the sd B., for the sum of £——, makg, with the sd ppal sum of £——, & the sd sum of £—— now due Witnesseth. for intt, the sum of £——: NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c. (the rect, &c.) & in conson also of the covt hinafter contd on the pt of the Grant. sd B., the sd A., **as benefl owner**, doth hby grt unto the sd B., *pcels*, p. 415: *Habendum to B. in fee*, p. 432, subjt to the hinbfe recited indre of mtge, & to the paymt of the sd ppal sum of £—— now owing as afsd upon the secy of the same indre, & the intt now due, & henceforth to accrue due in respt thof. *Covt by B. with A. to indemnify A. agst mtge debt*, p. 463. In wits, &c. (*c*).

(*a*) As both the freeholds and copyholds are conveyed to G. & H. to the uses or upon the trusts of the settlement, the acknowledgment will be made to them.

(*b*) See Elph. Introd. Conv., p. 120. See also the next Precedent; and as to the rights growing out of a conveyance of an equity of redemption, see *Kinnaird* v. *Trollope*, 39 Ch. D. 636. As to the stamp, see the Stamp Act, 1891, s. 57.

(*c*) Notice of the conveyance should be given to the mortgagee; see 2 Dart, V. & P. 784.

XXIV.

PREC. XXIV.

CONVEYANCE *of* EQUITY *of* REDEMPTION *of* LEASEHOLDS. THE MORTGAGEE *concurring for the purpose of* RELEASING *the Vendor's* COVENANT *for* PAYMENT *of the mortgage debt, and taking a* SUBSTITUTED COVENANT *from the* PURCHASER. VARIATION *where the mortgagee* WAIVES *his* RIGHT *of* CONSOLIDATION *instead of releasing the covenant* (*d*).

Parties, A., *vendor*, 1; B., *mtgee*, 2; C., *pchaser*, 3. *Recite lease to A.*, p. 393; *Mtge from A. to B.*, p. 387; *noticg the covt for paymt; State of mtge debt*, p. 410; *Contract for sale, see last precedent, &* p. 407; [AND WHAS it has been arranged that the sd B. shl concur in these psnts for the ppose of releasg the sd A. from his psonal liability under the covts contd in the hinbfe recited indre of mtge or orwise for paymt of the sd mtge debt & intt,

Recitals.

Agreement for concurrence of mortgagee.

(*d*) On the subject of the Consolidation of Mortgages, and the risks to a purchaser of an equity of redemption arising from this doctrine, see 2 Dav. Prec., part 2, 288 *et seq.*; Coote on Mortgages, chapter 67; Elph. Introd. Conv. p. 196; *Jennings* v. *Jordan*, 6 App. Ca. 698; *Harter* v. *Colman*, 19 Ch. D. 630; *Bird* v. *Wenn*, 33 Ch. D. 215. The right of consolidation is abolished where the mortgages, or one of them, are made after 1881, by the Conv. Act, 1881, s. 17; but only if a contrary intention is not expressed in the mortgage deeds, or one of them, so that it cannot be certain that the mortgagee may not still have the right. If the mortgagee releases the vendor's covenant, no question of consolidation can of course arise. To complete the purchaser's protection as against a transferee of the mortgage (whether the covenant or the right of consolidation is released), notice of this deed should be endorsed on the mortgage. This deed requires an *ad valorem* conveyance stamp on the amount of the purchase and mortgage moneys (see the Stamp Act, 1891, s. 57), as well as an *ad valorem* stamp of 6*d*. per cent. on the mortgage money in respect of the new covenant for payment (if any) as a substituted security (see the Act, Schedule, title MORTGAGE), or a 10*s*. stamp in respect of the release of the right of consolidation, if inserted.

Consolidation of mortgages.

Stamp.

PREC. XXIV.

& the other covts hinafter refd to in mner hinafter expd, in conson of the sd C. enterg into the substituted covts in that behalf hinafter contd :] [*or*, AND WHAS the sd B. has, at the reqt of the sd A. & C., consented to rele the rt wch he, his hrs, exs, ads, or assns, may now, or at any time hrafter, have of consolidatg any other mtge debt or secy with the sd mtge debt of £——, in mner hinafter mentd]:

Or waiver of right of consolidation.

Witnesseth.

NOW THIS INDRE WITNETH, that in psuance, &c., & in conson, &c. (the rect, &c.), & in conson also of [the rele hinafter contd by the sd B.], [the covt hinafter contd by the sd C.], the sd A. as benefl owner, doth hby assn unto the sd C., *pcels by reference to lease*, p. 419, *form* XVII.: *habendum to C., subjt to rent & covts*, p. 436, *& to the mtge, see* p. 434: *covt by C. with A. to indemnify him in respt of rents & covts of lease*, p. 461 [*& agst mtge debt, if not reled by the mtgee*, p. 463, *the latter covt, if inserted, being amalgamated with the former*]: [AND THIS INDRE ALSO WITNETH that in conson of the covts on the pt of the sd C., hinafter contd, the sd B. doth hby rele & absolutely dischge the sd A., his hrs, exs, & ads, from his & their psonal liability under the covts contd in the sd indre of mtge of, &c., or orwise, to pay the sd mtge debt of £——, or the intt thron, & the other psonal covts by the sd A. thrin contd, (except the covts [thby implied] for title to & further assurce of the sd premes): AND IN CONSON of the premes, the sd C. doth hby covt with the sd B., his exs, ads, & assns, &c., *covt for paymt of mtge moy & the intt thron from the —— day of —— last, & future intt, see* "MORTGAGES," & also that he, the sd C., his exs, ads, & assns, will duly pform & observe all the other covts, on the pt of the sd A., in the sd indre of mtge contd (except the covts [thby implied] for title to & further assurce of the sd premes)] [*or*, AND THIS INDRE FURTHER WITNETH that the sd B. doth hby, at the reqt of the sd A. & C., rele to the sd C., his exs, ads, & assns, all such rts as he, the sd B., his hrs, exs, ads, or assns, may, or but for this rele, might at

Assignment.

Further witnesseth.

Release of vendor from mortgage debt.

Covenant for payment of mortgage debt.

Further witnesseth.

Release.

any time or times hrafter have or exercise of consolidatg any other mtge debt or secy with the sd sum of £——, or the sd secy for the same, so as to chge the sd —— & hds hby assned with any sum or sums of moy other than the sd ppal sum of £——, & the intt thron, from the —— day of —— last]: PROVD ALWAYS that nothg hrin contd shl prejudice or affect the power of sale contd in the sd recited indre of mtge. IN WITS, &c.

PREC. XXIV. Of right of consolidation.

XXV.

RELEASE *of* EQUITY *of* REDEMPTION *of* FREEHOLDS *to the* MORTGAGEE (*a*). VARIATIONS *for* LEASEHOLDS *mortgaged by demise, and where the mortgage is kept on foot for the Purchaser's* PROTECTION (*b*).

PREC. XXV.

PARTIES, A., *vendor*, 1; B., *mtgee & pchaser*, 2. *Recite mtge in fee from A. to B.*, p. 387; *State of mtge debt*, p. 410: AND WHAS the sd A. has agrd with the sd B. for the absolute sale to him of the sd hds & premes hby assured, in conson of the sd B. releasg the sd A. from the sd sum of £—— owing on the secy of the sd indre of mtge as afsd, & all intt henceforth to accrue due thron in mner

Recitals. Agreement.

(*a*) A mortgagee may purchase the equity of redemption from the mortgagor, if there is no undue pressure or unfairness in the transaction; see 2 Dav. Prec. pt. 1, 294, note. The power formerly possessed by a mortgagee of harassing the mortgagor, and making it difficult for him to find a person to take a transfer of the mortgage, by refusing to produce the title deeds, has been removed by the Conv. Act, 1881, s. 16.

Purchase of equity of redemption by mortgagee.

(*b*) See 2 Dav. Prec. pt. 1, p. 324. See also Prec. XIII. It is considered to be beyond question that the mortgage debt may be kept alive by a simple declaration without an assignment to a trustee. See *Adams* v. *Angell*, 5 Ch. D. 634; *Re Pride*, [1891] 2 Ch. 135. It is a question whether the keeping alive the mortgage debt as personal estate of the purchaser would not create a liability to probate duty on his death; see p. 490, note (*a*).

As to keeping mortgage debt alive.

PREC. XXV.

hinafter mentd, & of the paymt by the sd B. to the sd A. of the sum of £——, makg with the sd sum of £—— the sum of £——, [but so nevs that the sd sum of £—— so owing on the secy of the sd indre of mtge as afsd, shl be kept on foot as a subsistg chge on the sd premes for the benefit of the sd B., his hrs & assns, in mner hinafter appearg]:

Witnesseth.

NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— upon the exon of these psnts pd by the sd B. to the sd A., (the rect, &c.), & in conson also of the rele hinafter contd by the sd B. to the sd A. of the sd sum of £—— so owing as afsd & the intt thron,

Grant.

the sd A. as benefl owner doth hby grt & rele unto the sd B., *pcels*, p. 415 (*a*); *Habendum to B. in fee, free from equity of redmon*, p. 437: AND IN CONSON of the premes the sd B.

Release of mortgage debt (*b*).

doth hby rele the sd A., his hrs, exs, & ads, from the sd sum of £—— owing on the secy of the sd indre of mtge as afsd,

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(*a*) The parcels may (and more commonly would) be set out in the recital of the mortgage, in which case the grant will be of, "All & singr the hds & premes comprd in or expd to be assured by the sd indre of mtge, or wch are now by any means vested in the sd B., subjt to redmon by virtue thof."

(*b*) A duplicate of the conveyance executed by the mortgagee should be delivered to the mortgagor, or the release of the debt might be by a separate instrument.

Variations for leaseholds.

The variations for leaseholds will be as follows: the deed will commence with the recital of the lease, and in the recital of the contract for sale the property will be described as "the premes comprd in the hinbfe recited indre of lease;" in the operative part A. will "assn & rele" the parcels by reference to the lease, habendum "unto the sd B., his exs, ads, & assns, henceforth for all the residue now unexpired of the sd time of —— yrs grted by the sd lease," subject to rent and covenants, &c. but free from equity of redemption, "& to the intent that the sub-term expd to be grted by the sd indre of mtge shl merge in the sd term of —— yrs grted by the sd indre of lease & become extinguished;" add the usual covenant of indemnity against the rent and covenants of the lease; and in the proviso keeping alive the mortgage omit the words, "in trust for the sd B., his hrs & assns."

& all intt to accrue due thron, & from all actions, pcdgs, claims, demands, & liability in respt thof or orwise under the sd indre of mtge: [PROVD ALWAYS, & the sd B. doth hby declare that the sd sum of £——, & the intt to accrue due in respt thof, shl not merge in the equity of redmon of the sd hds & premes, but shl be considered & kept on foot as a subsistg chge on the sd premes, & be vested in the sd B., his exs, ads, & assns, in trust for him the sd B., his hrs & assns, & so as to protect him & them agst all mesne incumbces, chges & estes, if any such there be.] [*If the munimts of title wch are in the posson of B. relate to any ppty retained by A. add acknowemt & undertakg by B.*, p. 459.] IN WITS, &c.

PREC. XXV. Proviso keeping alive mortgage.

XXVI.

CONVEYANCE *of a* BANKRUPT'S FREEHOLDS, LEASEHOLDS, *and* COPYHOLDS *by the Trustee in Bankruptcy* (*a*), *with the concurrence of the* REPRESENTATIVES *of a* MORTGAGEE. VARIATIONS *where the* BANKRUPT *joins to* CONFIRM *the Sale and* COVENANT *for Title* (*b*).

PREC. XXVI.

(*a*) See the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 5, 9, 16 (3), 18 (11), 20. As to the trustee and his powers, see ss. 21, 43, 44, 54, 56, 68 (3), 70 (18), 87 (4). As to evidence of his appointment, see s. 138. The official receiver when acting as trustee, in the interval between the adjudication and the appointment of a trustee by the creditors, has power to sell the bankrupt's property: *Turquand* v. *Board of Trade*, 15 Q. B. D. 196; 11 App. Ca. 286. As to partnership property, see s. 112. As to stamp duty, see s. 144. As to the powers of a trustee under a composition or scheme of arrangement, see the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 3 (16). As to sale under Bankruptcy Acts.

(*b*) There can seldom be any occasion for obtaining the bankrupt's concurrence, as the annulment of the bankruptcy would not prejudice *bonâ fide* sales or dispositions of the property (see the Bankruptcy Act, 1883, s. 35); and the bankrupt's covenants would rarely be of any value. Concurrence of bankrupt.

PREC. XXVI.

PARTIES, A. & B., *exs & devisees* (*a*) *of mtgee*, 1; C., the tree of the ppty of D., a bkpt (hinafter called the sd tree), 2 (*b*); [the sd D., *bkpt*, 3;] E., *pchaser*, 4. *Recite lease*, p. 393; *Devolon of title to bkpt D.*, p. 395; *Mtge of freehds, leasehds & copyhds by D. to X.*, p. 388; *Condonal surrender to X.*, p. 388; *Will of X. apptg A. & B. exs, & devisg mtge estes to them; Death of X. & probate*, p. 402; *Bkptcy of D., & apptmt of C. tree*, p. 405; *Contract by C. for sale to E.*, p. 407; *State of mtge debt*, p. 410; *Agrmt of A. & B. to concur*, p. 410: [AND WHAS the sd D., at the reqt of the sd tree, has agrd to concur in these psnts in mner hinafter exprd]: NOW THIS INDRE WITNETH that in psuance of the sd recited agrmts, & in conson, &c. (the rect, &c.,) *the whole pchase-moy* (*c*) *pd, as to pt to A. & B., as to balce to the tree, see* p. 414, the sd A. & B., **as mtgees**, at the reqt [*or, if paid off in full*, by the diron] of the sd tree, do hby grt & rele, & the sd tree, **as tree**, doth hby grt & confirm, [& the sd D., as **benefl owner** at the reqt of the sd tree, doth hby grt, rele, & confirm] unto the sd E., *freehd pcels*, p. 415: *Habendum to E. in fee, free from the mtge*, p. 434: AND THIS INDRE ALSO WITNETH that in psuance, &c., & for the conson afsd the sd A. & B., **as mtgees**, at the reqt [by the diron] of the sd tree, do hby assn [surrender] & rele, & the sd tree, **as tree**, doth hby assn & confirm [& the sd D., **as benefl owner**, at the reqt of the sd tree, doth hby assn, rele, & confirm] unto the sd E., *leasehd pcels*, p. 419. *Habendum to E., subjt to rent, &c., & free from mtge, see* pp. 434, 436: AND THIS INDRE ALSO WITNETH that in further psuance, &c., & for the conson afsd, the sd tree, **as tree**, doth hby appt, & the sd

Recitals.

Agreement of bankrupt to concur.

Witnesseth.

Grant.

Further witnesseth.

Assignment of leaseholds.

Further witnesseth.

As to a sale by an undischarged bankrupt of real estate acquired after the bankruptcy to a *bonâ fide* purchaser for value, see *Re New Land Development Association*, [1892] 2 Ch. 138.

(*a*) See p. 523, note.

(*b*) See the Bankruptcy Act, 1883, s. 83.

Stamp.

(*c*) As the copyholds in this case are conveyed by deed, without any surrender (see the Bankruptcy Act, 1883, s. 50), no apportionment of the purchase-money is required: see the Stamp Act, 1891, ss. 58, 61.

A. & B. **as mtgees**, at the reqt [by the diron] of the sd tree do hby rele (*d*) [& the sd D. **as benefl owner**, doth hby grt, rele, & confirm] *copyhd pcels*, p. 415, To THE USE of the sd B., his hrs & assns, accdg to the custom of the sd manor, subjt to the rents, fines, suits & services due & accustomed for the same : [*Covt by E. with D., & also as a separate covt with the tree, if he is under any continuing liability* (*e*), *to indemnify them resply agst the rent & covts of lease, see* p. 461.] IN WITS, &c. PREC. XXVI. Grant of copyholds.

XXVII.

CONVEYANCE *by* HUSBAND *and* WIFE *of the* WIFE'S FREEHOLDS *under the* OLD *law* (*f*) *to a* SUB-PURCHASER, *to whom the benefit of the contract has been transferred pending completion at an* ADVANCE *in* PRICE (*g*). PREC. XXVII.

PARTIES, A. & B., "his wife," *vendors*, 1 ; C., *origl pchaser*, 2 ; D., *sub-pchaser*, 3 : WHAS the sd A. & B., who Recitals.

(*d*) The conditional surrender to the mortgagee will be vacated.

(*e*) See above, p. 271, note (*d*) ; p. 461, note (*c*).

(*f*) If the marriage took place or the property was acquired by the wife after 1882, she would have an absolute power of disposition as a *feme sole*, under the Married Women's Property Act, 1882, ss. 1, 2, and 5 see Prec. XXIX., *infra*, which is adapted to that case, and the note thereto. If both the marriage and the acquisition of the property were before 1883, the wife's power of disposition is governed by the old law ; but she is nevertheless able to contract as a *feme sole* under s. 1 of the above Act (as she also was to a more limited extent under the old law), with respect to her separate estate (but see *post*, p. 541, note) ; and her implied covenants for title and acknowledgment and undertaking as to muniments operate accordingly. Married women's powers of disposition.

In the case of the above precedent, as the wife's rights are governed by the old law, and the property is not settled to her separate use, the husband must concur and she must acknowledge the deed under the Fines and Recoveries Act, 3 & 4 Wm. 4, c. 74, ss. 77 *et seq*. By the Conv. Act, 1882, s. 7, the acknowledgment of deeds as to real estate Acknowledgments under old law.

PREC. XXVII.

intermarried togr on the —— day of ——, are seised in rt of the sd B., &c., p. 399, under an indre, &c.; *Contract for sale by A. & B. to C., & sub-contract for sale by C. to D.* p. 409. NOW THIS INDRE WITNETH, that in psuance of the sd respive agrmts, & in conson of the sum of £——

Witnesseth.

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under that Act (and see as to contingent interests, &c., 8 & 9 Vict. c. 106, ss. 6 & 7), and as to reversionary interests in personal estate under 20 & 21 Vict. c. 57, in those cases in which it is still necessary, is simplified by substituting one commissioner for two, and doing away with the filing of a certificate of the acknowledgment; so that upon the memorandum of acknowledgment by one commissioner being endorsed on or written at the foot or in the margin of the deed, the acknowledgment is complete, and the deed takes effect from that time: see the Rules of December, 1882, under the Act. As to the effect of the acknowledgment, see *Tennent* v. *Welch*, 37 Ch. D. 622; and as to the effect of an order dispensing with the husband's concurrence under the Fines and Recoveries Act, s. 91, see *Fowke* v. *Drdycott*, 29 Ch. D. 996. As to the necessity for the acknowledgment being made at the time of execution, see *Druitt* v. *Willens*, 23 L. R. Ir. 436. The husband's concurrence is effectual notwithstanding his previous bankruptcy; *Re Jakeman*, 23 Ch. D. 344. The following is the form of acknowledgment in the rules of December, 1882:—

Form of memorandum of acknowledgment.

"This deed was this day produced bfe me & acknowed by, *name in full of married woman or women*, thrin named to be her act & deed [their sevl acts & deeds] prevs to wch acknowemt[s] the sd was [were] examined by me separately & apart from her husbd [their respive husbds] touchg her [their] knowledge of the contents of the sd deed & her [their] consent thto, & [each of them] decld the same to be freely & voluntarily exted by her [& I declare that I am not intted or concerned eir as a pty or as a solor or clerk to the solor for one of the pties or orwise in the transon givg occasion for the sd acknowemt].

Wits my hand this day of ,
(*Signed*) A. B.,
a Judge, &c., *or*, a perpetual Commr, &c., *as the case may be*."

Enquiry as to settlement.

A purchaser dealing with a married woman is not bound to enquire into the existence of a settlement: *Lloyd's Banking Co.* v. *Jones*, 29 Ch. D. 221; but it is a prudent precaution to do so.

Sub-sales.

(*g*) As to sub-sales, see 1 Dart V. & P. 581; and as to the stamp, see the Stamp Act, 1891, s. 58.

to the sd A. & B., & of the sum of £—— to the sd C., resply pd by the sd D. (the rect of wch respive sums the sd A., B., & C. do resply hby acknowe), the sd B., **as benefl owner** (*a*), with the concurrce of the sd A., at the reqt of the sd C., doth hby grt, & the sd A., **as benefl owner** (*a*), & the sd C., **as benefl owner** (*a*), do resply hby grt & confirm unto the sd D., *pcels*, p. 415: *habendum to D. in fee*, p. 432 [*Acknmt & undertakg by A. & B. as to munimts belonging to B.* (*b*), p. 459]. IN WITS, &c. (*c*). PREC. XXVII. Grant.

XXVIII.

CONVEYANCE *of* FREEHOLDS *belonging to a* MARRIED WOMAN *absolutely for her* SEPARATE USE *under the* OLD *law, to the* USES *of a* WILL *in* STRICT SETTLEMENT, *on a purchase by the* TRUSTEES (*d*). VARIATIONS *where the* HUSBAND *is made a* PARTY (*e*). PREC. XXVIII.

(*a*) This implies covenants for title by B., binding her separate estate, as to the acts of herself and her predecessors in title, by A. as to the acts of himself and B., and her predecessors in title, and by C. as to his own acts only, he being a purchaser for value; see p. 438, note. C. would sometimes be made to covenant only against incumbrances (which would be effected by making him convey "**as tree**";) but it is better to make him give the full covenants, and there can be no reason against his doing so. Covenants for title.

(*b*) It is conceived that the deeds must be considered in law as in the sole possession of the husband in right of the wife, and that the husband is therefore the proper person to give the statutory acknowledgment, see p. 454; but to prevent questions, the wife should join in the acknowledgment. Acknowledgment.

(*c*) To be acknowledged by B.

(*d*) For a form for a purchase by a tenant for life under the Settled Land Act, see p. 523. This precedent is for a case in which there is no person possessing the powers of the Act; otherwise his concurrence would be necessary under s. 56; see note on the Act, pp. 501 *et seq.*

(*e*) A married woman entitled to property, real or personal, for her separate use, without any restraint upon anticipation, can, independently Disposition by married

PREC. XXVIII.

Parties, A., *married woman*, 1; [B., *husbd*, 2;] C., *tree*, 3; D. & E., *trees of will & grtees to uses, pchasers*, 4.

Recitals. *Recite deed or will whby*, "the hds hby assured," *were conveyed or devised to such uses as A. shd appt, & in default of apptmt to the use of C. in fee, in trust for the separate use of A.: Contract for pchase by the trees of the will of X., from A.*, p. 407, *form* IV. *Agrmt that* [*B. &*] *C. shd* "[resply] join in

Witnesseth. these psnts in mner hinafter appearg." NOW THIS INDRE WITNETH, that in psuance, &c., & in conson of the sum of £—— now pd by the sd D. & E., out of such sale moys as afsd, to the sd A. as her separate este (the rect, &c.), the sd A., **as benefl owner** (*a*), in exercise of the power vested in her under the sd indre of, &c. [will], as hinbfe is recited, & of every other power enablg her in this

Appointment. behalf, doth hby appt (*b*), that ALL & SINGR the hds hby grtd shl (subjt as hinafter mentd), henceforth go & remain To THE USES, upon the trusts, & subjt to the powers & provons hinafter expd concerng the same: AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmts, & for the conson afsd, the sd C., **as tree** (*a*), by the

Grant. diron of the sd A., doth hby grt, & the sd A., **as benefl**

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woman of her separate estate. of the Married Women's Property Act, 1882 (as to which see *infra*, p. 539, note), dispose of the beneficial interest by deed or will, as if she were a *feme sole*, 2 Dav. Prec. Pt. 1, 241. She cannot, however (apart from that Act) pass the legal estate, except where, in the case of freeholds (as in the text), she has a power of appointment operating under the Statute of Uses (see p. 437, note). If this is not the case, and the legal estate is vested in trustees, they must join to convey it; if there are no trustees, and the husband is at law seised in right of his wife, he must concur in the conveyance, which must in that case be acknowledged by the wife, so as to pass the legal estate. Even if the property is settled on the wife so as to enable her to convey the whole legal and equitable estate, it is desirable to obtain the concurrence of the husband, by way of confirmation, lest the wife should have dealt with the property in his favour, and also that he may covenant for the title.

Covenants for title. (*a*) This implies the same covenant by A. binding her separate estate, and also by B., if he is a party and conveys as beneficial owner, with D. and E., as in the last Precedent, and also a covenant by C. against incumbrances; see p. 439, note.

(*b*) If the conveyance is to a purchaser in fee, the appointment and grant may be united in one clause, as in Prec. IV., p. 474.

owner (*c*), doth hby grt & confirm [& the sd B., as benefl owner (*c*), at the reqt of the sd A. doth hby also grt & confirm] unto the sd D. & E., *pcels*, p. 415; *Habendum to* D. & E., & their hrs, subjt, &c., *to tenancies*, *To the uses of will*, p. 435. [*Acknowemt & undertakg as to munimts retained*, p. 459 (*d*).] IN WITS, &c. PREC. XXVIII.

XXIX.

CONVEYANCE *of* FREEHOLDS *by a* MARRIED WOMAN *as a feme sole under the* MARRIED WOMEN'S PROPERTY ACT, 1882. VARIATIONS *where the* HUSBAND *ioins to* CONFIRM *and* COVENANT *for the* TITLE (*e*). PREC. XXIX.

PARTIES, A., *vendor*, the wife of B. of, &c. 1; [The sd B. 2;] C., *pchaser*, 3. *Recite* A.'s *seisin in fee*, *form* II., Recitals.

(*c*) See note (*a*), on previous page.

(*d*) The acknowledgment must be given by the person or persons in actual possession of the deeds (see p. 456, note); if they are in the custody of the wife, the husband should join in it, as it may be a question whether, although the property is the wife's separate estate, the possession of the deeds would not be deemed in law to be that of the husband, or of the husband and wife jointly, in her right; see p. 456, note (*a*). Acknowledgment.

(*e*) The Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, has repealed (s. 22) the Married Women's Property Acts, 1870 and 1874 (which had only a very limited operation), and effected a most important change, as from the 1st of January, 1883, the date of the commencement of the Act, in the legal status of married women. The Married Women's Property Act, 1882

By s. 1 (1) every married woman, whether married before or after the Act, was made capable of acquiring, holding, and disposing by will or otherwise of any property, real or personal (including by s. 24 choses in action), as her separate property in the same manner as if she were a *feme sole*, without the intervention of a trustee. Power to acquire and dispose of property.

The question whether in any particular case her property is to be deemed her separate property is dependent on ss. 2 and 5 of the Act (subject, however, to the effect of s. 19, as to which see next page). By s. 2 every woman marrying *after* the commencement of the Act is enabled to hold as her separate property, and to dispose of in manner aforesaid, all real and personal property belonging to her at the time of marriage, or acquired by or devolving on her after marriage, including Women marrying after the Act.

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p. 398; *Contract for sale*, p. 407, *form* I.; [*Recital introductory to covt for prodon of deeds*, p. 411]; [AND WHAS the

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Women marrying before the Act.

her separate earnings; and by s. 5 every woman married *before* the commencement of the Act is enabled to hold and dispose of in manner aforesaid as her separate property all real and personal property, her *title* to which, whether vested or contingent, and whether in possession, reversion, or remainder, accrues *after* the commencement of the Act. This last provision, after numerous conflicting decisions, was held by the Court of Appeal, in *Reid* v. *Reid*, 31 Ch. D. 402, not to apply where the *title* had arisen before the Act, but the property did not fall into possession till afterwards, so that a woman married before 1st January, 1883, who was then entitled to a reversionary or contingent interest, does not, on its falling into possession or becoming absolute, acquire it as her separate property under the Act. But a mere *spes successionis* as one of a class of possible next of kin, is not a "contingent title" within s. 5; *Re Parsons*, 45 Ch. D. 51, dissenting from *Re Beaupré*, 21 L. R. Ir. 397.

Settlements not to be affected.

It is provided, however, by s. 19, that the Act is not to affect any settlement or any restriction on anticipation; as to the effect of this, see *Hancock* v. *Hancock*, 38 Ch. D. 78; *Stevens* v. *Trevor-Garrick*, 41 W. R. 412; *infra*, SETTLEMENTS.

Old law in force as to property acquired by married woman before the Act.

The old law as to a married woman's power of disposing of her property is thus entirely superseded as to all property which is by the Act made her separate property, as to which she is enabled to dispose of both the legal and equitable estate as a *feme sole* (subject to any settlement or restraint on anticipation), but the Act does not remove the disabilities of a woman married *before* its commencement as regards her power of disposing of property not settled to her separate use, to which she was entitled *at the time* of its commencement (although not falling into possession till afterwards), or affect the marital rights of the husband in respect of such property, and the old law remains to that extent in force.

Power of disposition over property settled to separate use.

As regards property settled to the separate use of a married woman under the old law, she has the same power of disposition as if she were a *feme sole*, so far as the equitable estate is concerned, *Taylor* v. *Meads*, 4 De G. J. & S. 597; but this does not extend to any legal estate or interest which is vested in her unless (as regards freeholds) she has a power of appointment operating under the Statute of Uses (see p. 537, note (*e*)); and this disability is not removed by the Act, so that a deed acknowledged may still be necessary in that case (*i.e.*, as to property settled on a married woman prior to 1883), where it would have been before the Act. As to what was sufficient to create separate use in land under the old law, see *Dye* v. *Dye*, 13 Q. B. D. 147; as to personalty, see *Surman* v. *Wharton*, [1891] 1 Q. B. 491.

As to property vested in a married woman as trustee.

The late Act *primâ facie* relates only to property to which a married woman is beneficially entitled, and not to property of which she is only a trustee (except s. 18, which is confined to stocks, shares, &c.), so that a deed acknowledged with the concurrence of the husband, may still be necessary, or at any rate could not prudently be dispensed with, to pass

sd B. has at the reqt of the sd A. & for the satisfon of the sd C. agrd to join in these psnts for the ppose of confirmg

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Agreement of husband to join.

an interest in land vested in a married woman (whether married before or after the Act), as a trustee (not being a bare trustee within the Vendor and Purchaser Act, 1874, s. 6, as to which see *Re Docwra*, 29 Ch. D. 693, above p. 257, note), in all cases in which it would have been necessary before the Act.

Power of married woman to contract.

The disabilities of married women (whether married before or after the Act) as regards *contracting* are also removed by the Married Women's Property Act, 1882, which enacts (s. 1, sub-s. 2) that a married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued in contract or in tort or otherwise (as to which see *Whittaker* v. *Kershaw*, 45 Ch. D. 320) as if she were a *feme sole;* and by s. 1 (3) every contract entered into by her is to be deemed to be entered into with respect to and to bind her separate property, unless the contrary be shown; and by s. 1 (4) is to bind not only the separate property which she is entitled to at the date of the contract, but also all separate property which she may thereafter acquire (which is an extension of the old law, under which the power of a married woman to bind her separate estate in equity was confined to her existing property, see *Pike* v. *Fitzgibbon*, 17 Ch. D. 454; *Smith* v. *Lucas*, 18 Ch. D. 531; *King* v. *Lucas*, 23 Ch. D. 712), subject (s. 19) to any restriction on anticipation affecting her, see *Draycott* v. *Harrison*, 17 Q. B. D. 147. Property as to which a married woman was at the date of the contract restrained from anticipation cannot by the subsequent removal of the restraint by the death of the husband be made liable on the contract; *Pelton* v. *Harrison*, [1891] 2 Q. B. 422.

But the effect of the Act has been narrowed down (in a manner which, as the writer ventures to think, is not warranted by its wording, and which goes far to destroy its beneficial operation) by the decisions in *Re Shakespear*, 30 Ch. D. 169, and *Palliser* v. *Gurney*, 19 Q. B. D. 519, approved by the C. A. in *Stogdon* v. *Lee*, [1891] 1 Q. B. 661, that the contract of a married woman is of no avail under the Act against her future acquired separate estate, unless she is shown (the onus of proof being on the creditor) to have at the date of the contract some separate property free from any restraint on anticipation; and the further decision in *Leak* v. *Driffield*, 24 Q. B. D. 98, that the property must be such that she may reasonably be supposed to have contracted with respect to it. The admission of the married woman on the face of the contract that she is possessed of separate property at the time, may estop her from adducing evidence to the contrary; and the clause at the end of the above precedent may be useful for this purpose.

As to powers of appointment.

By s. 4 the execution of a general power of appointment by will by a married woman is to have the effect of making the property appointed liable for her debts in the same manner as her separate estate is liable under the Act; see as to the old law, *In re Harvey*, 13 Ch. D. 216;

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Wit-nesseth.

the title of the sd C. & orwise in mner hinafter expd]: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— now pd by the sd C. to

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Hodges v. *Hodges*, 20 Ch. D. 749; *Re Roper*, 39 Ch. D. 482 (the dictum in which as to the effect of the late Act, overlooks s. 4); *Re Lawson*, 41 Ch. D. 568; *Re Parkin*, [1892] 3 Ch. 510, see p. 521.

Contracts of married women how enforced

The contract of a married woman under the Act is enforceable by or against her, as if she were a *feme sole*, without joining her husband (see s. 1 (2)), but she cannot be made bankrupt unless she is carrying on a separate trade; *Re Gardiner*, 20 Q. B. D. 249; *Re Armstrong*, 21 Q. B. D. 264.

The rule that judgment recovered against one of two joint contractors is a bar to an action against the other applies equally when one of them is a married woman; *Hoare* v. *Niblett*, [1891] 1 Q. B. 781.

Meaning of separate property.

It is clear from the whole scope of the Act (see specially ss. 13, 20, 21, and compare the provisions of the repealed Acts) that the expression "separate property," as used in the clauses relating to the contracts of a married woman, must be interpreted to include not merely property which is by the Act made her separate property, but also any property settled to her separate use under the old law; so that the effect of the contracts of a married woman entered into after the Act on property so settled is regulated by the Act (*Surman* v. *Wharton*, [1891] 1 Q. B. 491); and the old law on this subject (as to which see 3 Dav. Prec., p. 93, note) is superseded; but questions may arise as to the effect of the Act where a married woman has entered into contracts before as well as since the Act binding such property.

Although the contract of a married woman will bind her separate estate under the late Act without being so expressed (see s. 1, sub-s. 3), it may be desirable, where it is also intended to affect any property settled to her separate use under the old law, that the intention should be expressed.

As to making husband party

This Precedent is for a case where the marriage or the acquisition of the property was after the commencement of the late Act, so that the wife's power of disposition is absolute, and the husband's concurrence is unnecessary; the only reason for making him a party being to obtain his confirmation in case of the possibility of his having a lien by reason of the property having been acquired with his money, or of some subsequent disposition by the wife in his favour, and that he may covenant for the title; but any adverse equity of the husband's would not prevail against a *bonâ fide* purchaser from the wife without notice, who gets the legal estate and the deeds.

Effect of covenants for title, &c.

The wife's covenants for title implied by the Conv. Act, 1881, see s. 7 (3), and her acknowledgment as to muniments, will now, under the late Act, operate as if she were a *feme sole* to the extent of her separate estate; and the husband's implied covenants for title will extend to the acts of his wife as well as himself, see p. 440, note.

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the sd A. (the rect whof she doth hby acknowe) the sd A. as **benefl owner** (*a*) doth hby grt & convey [& the sd B. as **benefl owner** (*a*) as well for the ppose of confirmg the title to the sd premes as for implyg covts on his pt for the title to & further assurce of the same doth hby convey & confirm] unto the sd C., *pcels*, p. 415, To HOLD the same UNTO & TO THE USE of the sd C., his hrs & assns; [*Acknowemt & undertakg by A. as to munimts retained*, p. 459]; AND IT IS HBY AGRD & decld that the covts hby implied on the pt of the sd A. for the title to & further assurce of the sd premes hby assured, & the obligon created by the acknowemt & undertakg by the sd A. as to munimts hinbfe contd shl be bindg upon all the separate ppty & este to wch she, the sd A., is now, or may hrafter become entled, & all other ppty wch she has or may hrafter have power so to bind or chge, she the sd A. hereby admitting that she is now possessed of separate property. IN WITS, &c.

Grant.

Habendum to purchaser in fee.

Agreement that covenants are to bind wife's separate estate.

XXX.

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CONVEYANCE *by* TRUSTEES *and* EXECUTORS *of a* WILL *to effectuate a* CONTRACT *for* SALE *entered into by their* TESTATOR (*who died since* 1881) *in his lifetime for the sale of* FREEHOLDS *to the* TRUSTEES *of a* PERSONALTY SETTLEMENT *purchasing under a power to invest in land. The* TENANTS *for* LIFE *under the settlement being* CONSENTING *parties* (*b*).

PARTIES, A., B., & C., *exs & trees of will*, 1; D. & E., his wife, *beneficiaries under settlmt*, 2; F. & G., *trees of*

(*a*) This implies the statutory covenants for title and further assurance by A. binding her separate estate, and also by B.; see p. 440, note, p. 538, note.

(*b*) Where a vendor dies before completion of the sale, if there was a contract clearly binding on both vendor and purchaser and enforceable at his death, he will have become a trustee for the purchaser, so that

Conveyance where vendor

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Recitals.

settlemt, 3; WHAS by an indre of settlemt, dated, &c., & expd, &c., certn funds & ppty were settled upon the trusts

dies pending completion.

the legal estate will follow the ordinary rules for the devolution of trust estates; *Lysaght* v. *Edwards*, 2 Ch. D. 499; *i.e.*, if he died before 1882, it will have passed to his heir or devisees of trust estates (not being a "bare" trust estate vesting in the personal representative under the Vendor and Purchaser Act, 1874, s. 5, or the Land Transfer Act, 1875, s. 48; see as to this, *Morgan* v. *Swansea Urban Sanitary Authority*, 9 Ch. D. 582; *Re Docwra*, 29 Ch. D. 693); and if he died since 1881 (as in the case of this precedent), it will have devolved on his personal representatives, under the Conv. Act, 1881, s. 30 (which applies to all trust estates). If the contract was not enforceable by *both* parties at the death of the vendor, it seems that the legal estate would not be a trust estate of the vendor, and the question of fact may be one which could scarcely be settled except by a decree of the Court (see *Re Carpenter*, Kay, 418; *Re Colling*, 32 Ch. D. 333); but if (as in this case) he died since 1881, his personal representatives, although the legal estate does not vest in them under s. 30 of the latter Act, are, by the 4th section of that Act, empowered, where the contract was enforceable against the vendor at his death, to convey the estate to the purchaser. To bring the case within either the 4th or 30th section of the Act, there must have been a contract in writing (which would become part of the title); and even then the difficulty of showing that the case comes within the Act is such as to render it inexpedient to rely on it. The concurrence of the heir or devisees should, therefore, whenever practicable, be obtained. As to the difference between the adoption of the testator's contract and the making of a new contract on the same terms, as regards the conversion relating back to his lifetime, see *Re Harrison*, 34 Ch. D. 214.

Power of tenant for life under Settled Land Acts to carry out contract for sale by previous owner.

Reference may here be made to the Settled Land Act, 1882, s. 31, sub-s. 2, enabling a tenant for life (including any other limited owner under that Act) to execute a conveyance for giving effect to a valid contract for sale entered into by a previous tenant for life under the same settlement; and to the Settled Land Act, 1890, s. 6, empowering a tenant for life to execute a conveyance for giving effect to a valid contract for sale entered into by any predecessor in title. Where a father tenant for life and son tenant in tail have barred the entail and resettled, relimiting the father's old life estate with remainder to the son for life, and the father then contracts to sell, and dies before completion, the son could doubtless under one or other of these enactments, convey to the purchaser; and although the old settlement had ceased and the son's estate arises under the re-settlement, it is conceived that his conveyance would relate back to the contract so as to override any family charges under the old settlement, and so that the trustees of that settlement would be the proper recipients of the purchase money; or if this is doubtful, the case might be dealt with as one of a "compound" settlement according to *Re Ailesbury*, 37 Sol. J. 326.

thrin mentd, & by the sd indre the trees thof were empowered at the reqt of the sd D. & E., during their jt lives, to invest the sd trust funds or any pt thof, in the pchase of freehd Settlement (*a*).

In all the above cases the contract for sale becomes part of the title and should be preserved with the deeds.

(*a*) The following is a shorter form of recital:—

Short recital of purchase by trustees.

"Whas the sd F. & G., as the psnt trees of an indre dated, &c., & expd, &c., being a settlemt, &c., & in exon of a power thrin contd for the investmt of moys subjt to the trusts of the sd indre in the pchase of real este, & at the reqt., &c.;" *continue recital of contract for sale as in text.*

As to keeping trusts off title.

No attempt is here made to keep the trusts off the title, as it is doubtful whether in the result it will be of any avail, and no great practical inconvenience arises from their appearing; and it does not seem to concern the vendor to inquire into the trust; see *Mansfield* v. *Childerhouse*, 4 Ch. D. 82. But if there are a sufficient number of trustees to guard against fraud, there is no material objection to the conveyance being taken to them as joint tenants, as if they were beneficial owners; and, in case of the retirement of any of the trustees and the appointment of new ones, or in the event of the beneficiaries becoming absolutely entitled in possession, the property may be conveyed without disclosing the trust by a deed containing a recital (similar to that in use on the transfer of a mortgage for securing trust money) that the grantees have become absolutely entitled in equity to the property (see as to recitals having for their object the keeping of trusts off the title, *Re Harman*, 24 Ch. D. 720; *Carritt* v. *Real, &c., Co.*, 42 Ch. D. 263). But in the event of the death of a trustee (having regard to the Succession Duty Act, 1853, s. 3, and in case of the death of a sole trustee, having regard also to the Conv. Act, 1881, s. 30, carrying trust estates to the personal representative), the trust might have to be disclosed; and there would also be a difficulty in the event of a sale as regards the covenants for title, as the trustees could not be expected to covenant as beneficial owners; this, however, might be met by a condition that the vendors shall only be required to covenant against incumbrances, without stating that they are trustees; see *ante*, p. 282. If the trust is not disclosed it may be recited that the purchase-money is paid "out of moys belonging to the sd, *pchasers*, on a jt acct," or else that they have contracted for the purchase "as jt tenants," and the conveyance will be "unto & to the use of the sd, *pchasers*, their hrs & assns, as jt tenants in equity as well as at law." As to the equities growing out of the trustees borrowing part of the purchase-money on mortgage, see *Re Pumfrey*, 22 Ch. D. 255; and as to fraudulent dealings by a trustee where the trust is not disclosed, see *Carritt* v. *Real, &c., Co.*, *ubi sup.*

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hds situate in England or Wales, to be conveyed to the sd trees upon the trusts, & subjt to the powers & provons thrin decld & contd: AND WHAS the sd F. & G. are the psnt trees of the sd indre of settlemt: AND WHAS the sd F. & G., as such trees, in psuance of the afsd power in that behalf, & at the reqt (as they hby testify) of the sd D. & E. on the —— day of —— entd into a contract with X., deced, for the pchase from him of the hds hby grted, & the inhance thof in fee simple, for the sum of £——: AND WHAS the title of the sd X. was accepted by the sd F. & G. in his lifetime, but the sd pchase-moy was not pd by them, nor was any convce of the sd premes made to them by the sd X. in psuance of the sd contract; *Will of X. apptg A., B., & C., exs, & containg a general devise of real este to them in trust, death & probate*, p. 402: AND WHAS the sd F. & G. have reqted the sd A., B., & C., to exte a convce of the sd premes to them, the sd F. & G. in psuance of the sd recited contract of the sd testor: AND WHAS the sd F. & G. have raised the sd sum of £——, with the approbon (hby testified) of the sd D. & E. out of pt of the trust funds under the sd settlemt [wch were brought into settlemt on the pt of the sd D. (*a*)]. NOW THIS INDRE WITNETH that for effectuatg such sale as afsd & in conson of the sum of £—— now pd by the sd F. & G., at the reqt of the sd D. & E., to the sd A., B., & C., as psonal repves of the sd X. deced (the rect, &c.), the sd A., B., & C., **as such psonal repves**, & devisees in trust under the sd will of the sd X. as afsd (*b*), do resply hby grt & convey unto the sd F. & G., *pcels*, p. 415, *habendum to F. & G. in fee*, p. 433, *upon trusts of settlemt, form* XII., p. 435. IN WITS, &c.

Present trustees.

Contract for sale.

Acceptance of title.

Request to convey.

Origin of purchase-money.

Witnesseth.

Grant.

(*a*) If different parts of the settled funds may be subject to different trusts, the particular fund out of which the purchase-money is raised should be recorded, which will be best done by the conveyance.

(*b*) See p. 439.

XXXI.

PREC. XXXI.

CONVEYANCE *of* FREEHOLDS *under a* TRUST *for* SALE, *the* TENANT *for* LIFE *being a* CONSENTING PARTY. A SHORT FORM, *without* RECITALS.

Parties, A. & B., *trees for sale* (hinafter called the vendors), 1; C., *tenant for life* (hinafter called the life tenant), 2; D., *pchaser* (hinafter called the pchaser), 3; WITNETH that in conson, &c. (the rect, &c.), & in psuance & exon of the trusts of an indre dated, &c., & expd, &c., *the convce in trust for sale*, [*or*, the will, dated, &c., & proved on, &c., of X., late of, &c. deced], the vendors, as trees of the sd settlemt [will], with the consent (hby testified) of the life tenant, hby grt unto the pchaser, *pcels*, p. 415, *habendum to pchaser in fee*, p. 432. [*Acknowemt by A. & B. as to munimts*, p. 459.] IN WITS, &c.

XXXII.

PREC. XXXII.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *for* SALE *under a* WILL *to a* MARRIED WOMAN *as her* SEPARATE PROPERTY *under the* MARRIED WOMEN'S PROPERTY ACT, 1882, *the* HUSBAND *being a party* (*c*). *The persons* BENEFICIALLY *interested*

(*c*) As every married woman is now, by the Married Women's Property Act, 1882, ss. 1, 2, 5 (whether the marriage was before or after the Act), enabled to acquire, hold, and dispose of any property as a *feme sole* without the intervention of a trustee (see p. 539, note), property of any description may now be conveyed to a married woman in the same manner as to a man, except, perhaps, where the conveying party is her husband (see p. 668, note); but it is better to express that it is to be her separate estate. The wife can also enter into any covenants which may be required (as in the case of leaseholds for the vendor's

As to conveyances to married women.

PREC. XXXII.

in the PURCHASE-MONEY *or such of them as are* NOT *under* DISABILITY *confirming the* SALE *and* COVENANTING *for the* TITLE. VARIATIONS *where some of them are* MARRIED WOMEN (*a*).

PARTIES, A. & B., *trees*, 1; C., D. "& E. his wife," F. "& G. his wife," & H., *psons intted in the pchase-moy*, 2; I., *pchaser*, "the wife of X., of, &c.," 3; X., *husbd*, 4.

Recitals. *Recite will of testor, settg out fully the trust for sale & rect clause (if any)*, p. 395, *& statg shortly the trusts of the pchase-moy, so as to show the intts of the pties of the second pt; Death of testor & probate*, p. 402, *& testor's seisin*, p. 396; *Occurce of events upon wch the trust for sale was to arise; Contract for sale by A. & B. to I.*, p. 407, *form* IV.; "for the sum of £——, wch sum is intd to be pd by the sd I. out of moys belonging to her as her separate este, independently of her sd husbd," & she is desirous that the sd hds & premes shl be conveyed & assured to the uses & in mner hinafter

Interest of beneficiaries. expd: AND WHAS the sd pties hto of the second pt [or (as regards such of them as are married women) their sd husbds in their rt] are under the trusts of the sd will benefly entled to the pchase-moy of the hds and premes thby devised in trust for sale as afsd, in eql shares [*or*, in the shares & proportions followg (that is to say), &c., *or*, "to —— shares of the pchase-moy of the hds & premes, &c., the psons entled to the remaing —— shares thof, being under the age

Agreement to concur. of 21 yrs"]: AND WHAS the sd pties hto of the second pt

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indemnity against the rents and covenants), though her covenants may have only a limited operation, see p. 541, note.

The only object in this case of making the husband a party is to obtain his admission that the purchase-money is the wife's separate estate; but it is doubtful whether the vendor could require this. It may also sometimes be desirable that the husband should join to enter into covenants.

(*a*) As to making the beneficiaries parties in such a case, see 1 Dart, V. & P., 617. If E. & G. were married or their title accrued (as to which see *ante*, p. 539) since 1882, their husbands need not be parties, nor need they acknowledge the deed. Otherwise their acknowledgment is necessary; *Franks* v. *Bollans*, 3 Ch. 717.

have agrd to concur in these psnts, for the pposes & in mner hinafter appearg: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— to the sd A. & B., pd by the sd I. out of moys belonging to her as her separate este, independently of the sd X. (the rect, &c.), they, the sd A. & B., as trees of the sd will, do hby grt, & the sd pties hto of the second pt as benefl owners, accdg to their respive intts as hinbfe appearg, do resply hby confirm unto the sd I., her hrs & assns, *pcels*, p. 415, *habendum to I., in fee*, as her separate ppty & este independently of the sd X.: *Provo restrictg liability of* C., D., E., F., G., & H., *under the statutory covts, to a share in the premes conveyed, correspondg to his or her share in the pchase-moy, see* p. 453, *form* IV. [*Acknowemt by A. & B. as to munimts*, p. 459]. IN WITS, &c.

PREC. XXXII.

Witnesseth.

Grant.

XXXIII.

PREC. XXXIII.

CONVEYANCE *to one of the* TRUSTEES *and* EXECUTORS *of a will of* FREEHOLDS *purchased under a* RIGHT OF PRE-EMPTION (*b*) *given to him by the* WILL, *and of* LEASEHOLDS *held for a* LONG TERM (*c*), *the duration of which is* UNKNOWN, *with the* CONCURRENCE *of the* BENEFICIARIES (*d*).

Parties, A., B., & C., *trees & exs & also beneficiaries*, 1; D. & E., *beneficiaries*, 2; "the sd" C., *pchaser*, 3. *Recite*

(*b*) As to the exercise of a right of pre-emption of this kind, see *Brooke* v. *Garrod*, 2 De G. & J. 62; *In re Hodges*, 16 Eq. 92; *Austin* v. *Tawney*, 2 Ch. 143.

Right of pre-emption.

(*c*) The power given by the Conv. Act, 1881, s. 65, as amended by the Conv. Act, 1882, s. 11, to enlarge a long term into a fee simple, could not be acted on, for want of the means of showing that the case is within the Act.

(*d*) The concurrence of the beneficiaries is not necessary as to the freeholds, which are conveyed according to the trusts of the will; but as to the leaseholds is necessary, the sale being to one of the trustees and

Purchase by trustees or executors of the

PREC. XXXIII.

Recitals. Will.

will of X., containg genl devise & beqt to A., B., & C., in trust for sale & divon of pceeds after paymt of debts, &c., among his chn, A., B., C., D., & E., with option to testor's sons in succession accdg to seniority to pchase, "the freehd messe & hds hby grted," *at a valuon to be made by a valuer to be nominated by the trees, & apptg A., B., & C. exs— death & probate*, p. 402; AND WHAS the sd X. was at his

Seisin of testator.

dece seised in fee simple of the sd freehd messe & hds hby grted free from incumbces, & was also absolutely entled to the pce of land & hds hby assned, wch are of leasehd tenure, & (as is believed) free from rent & covts, & are held for a long term of yrs, but the origin & duron of such term are not known: AND WHAS the sd C. is the eldest son of the sd

Valuation of freeholds.

X.: AND WHAS in psuance of the trusts of the sd will, the sd A., B., & C., duly appted K., of, &c., & L., of, &c., to value the sd freehd messe & hds, & the same were valued

Offer and acceptance.

by them at the sum of £——; AND WHAS the sd A., B., & C., by writg under their hands, dated, &c., psuant to the dirons of the sd will, duly offered the same messe & hds to the sd C. at the sd valuon price of £——, & the sd C., by writg, under his hand, dated, &c., *or*, "within the time in that behalf prescribed by the sd will," duly decld his desire to pchase the sd messe & hds for the sd sum of £——, & reqted the sd A. & B. to convey the same to him psuant to

Agreement for sale of long term.

the sd will: AND WHAS the sd A. & B., as such exs & trees (*a*) as afsd, with the approbon & concurrce of the sd D. & E., have also agrd with the sd C. for the sale to him

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trust property.

executors. As to purchases by trustees from themselves or their *cestuis que trust*, see Lewin on Trusts, pp. 534, *et seq.*; *Harvey* v. *Lambert*, W. N. 1888, p. 38. As to the purchase of the testator's estate by an executor who has not proved, see *Clark* v. *Clark*, 9 App. Ca. 733. As to a purchase by a solicitor from his client's trustee in bankruptcy, see *Luddy's Trustee* v. *Peard*, 33 Ch. D. 500. As to the purchase by a person in a fiduciary relation on a sale under the Court, see *Boswell* v. *Coaks*, 23 Ch. D. 302, 27 Ch. D. 424, 11 App. Cas. 232.

(*a*) The sale may be made by the parties as executors or trustees according to whether they have assented to the bequest to themselves or not; but there is no practical objection to their being expressed to sell in both characters.

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of the sd leasehd pce of land & hds for the sum of £——, at wch the same have been valued by the sd K. & L., for the ppose of such sale, on the instrons of the sd A., B., D., & E., such valuon havg been made as if the sd premes were freehd: AND WHAS the sd D. & E. have agrd to concur in these psnts for the ppose of confirming the sd sale, as well of the sd freehd as of the sd leasehd hds, & the assurce thof hby made & orwise in mner hinafter expd: NOW THIS INDRE WITNETH, that in psuance of the sd agreemt in this behalf & in exon of the trusts of the hinbfe recited will of the sd X., & in conson, &c., *pchase-moy for freehds*, now pd by the sd C. to the sd A., B., & C., as trees of the sd will, with the approbon of the sd D. & E. (the rect, &c.), they the sd A. & B. as trees of the sd will, do resply hby grt & rele (*b*), & each of them the sd A., B., D., & E., & as benefl owner, as to one undivided fifth pt of the hds next hinafter descd & intd to be hby grtd, doth hby grt, rele, & confirm unto the sd C., *freehd pcels*, p. 415, *habendum to C. in fee*, p. 433, dischgd from the trusts & provons of the sd will of the sd X.: AND THIS INDRE ALSO WITNETH, that in psuance of the sd recited agrmt in this behalf, & in conson, &c., *the pchase-moy for leasehds* (the rect, &c.), the sd A. & B. as such exs & trees as afsd, do resply hby assn & rele, & each of them the sd A., B., D., & E., as benefl owner as to one eql undivided fifth pt of the hds next hinafter descd & intd to be hby assnd, both hby assn, rele, & confirm unto the sd C., *pcels*, p. 415: TO HOLD the same UNTO the sd C., his exs, ads, & assns, henceforth for all the term of yrs, este & intt for wch the same premes are held (*c*), dischgd from the trusts of the sd will [*Covt by A. & B. with C. for*

Agreement to concur.

Witnesseth.

Grant.

Further witnesseth.

Assignment.

Habendum.

(*b*) This operates as a release by A. & B. of their estate in joint tenancy to C. their co-tenant. The Conv. Act, 1881, s. 50, does not apply to this case.

(*c*) If there were any doubt as to the tenure, the conveyance should be framed so as to be effectual in either case.

PREC. XXXIII. *prodon of deeds in the jt custody of A., B., & C., as exs & trees*, p. 458, *form* II. (*a*)]. IN WITS, &c.

XXXIV.

PREC. XXXIV. CONVEYANCE *of* FREEHOLDS *by a* TRUSTEE *under a* POWER OF SALE *in a* STRICT SETTLEMENT *by* REVOCATION *and* APPOINTMENT *of the use* (*b*), *with the consent of the* TENANT FOR LIFE. A JOINTRESS *under a prior Settlement, and the* TRUSTEE *of a* TERM *for securing the* JOINTURE *concur for the purpose of* RELEASING *the* ESTATE *and* SURRENDERING *the* TERM, *which is merged.* THE TENANT FOR LIFE *covenants to* INDEMNIFY *the* PURCHASER *from another overriding* CHARGE *and the* SUCCESSION DUTY *payable on the death of the* JOINTRESS. VARIATIONS *where the* SALE *is made free from* INCUMBRANCES *under the* CONVEYANCING ACT, 1881, *s.* 5, *and where the concurrence of the* TRUSTEE *of the* TERM *is dispensed with* (*c*).

PARTIES, A., *survivg tree of settlemt*, 1; B., *tenant for life*, 2; C., *widow, jointress*, 3; D., *tree of jointure term*,

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Acknowledgment. (*a*) It is considered that the statutory acknowledgment would not be effectual in this case, as the documents are in the joint custody of A., B., and C., and the Act only applies where the acknowledgment is given by the person or persons in possession of the documents to another person, see p. 456, note; and that even the addition of an express declaration that the acknowledgment is intended to operate according to the statute in the same manner as if the deeds were in the possession of the parties giving it, might not remove the objection, as it is doubtful whether it would be binding on third parties, to whom the deeds might be afterwards delivered. It is better, therefore, in this case to insert an express covenant.

(*b*) The trustee having no estate. If the legal estate were in the trustee, he would convey by grant, as in Precedent XXXIII. The sale would now usually be made by the tenant for life under the statutory

4 (*d*) ; E., *pchaser*, 5. *Recital of strict settlemt of the* " hds first hinafter descd & intd to be hby appted (togr with other PREC. XXXIV. Recitals. Settlement.

power conferred by the Settled Land Act, although the express power of sale is kept alive by s. 56 ; see note on the Act, p. 501, and Precedent XXVIII., p. 513 ; but this precedent may be used where the powers of the Act are not available, *e.g.*, where they are suspended by an overriding trust for accumulation, see p. 503.

(*c*) The main point in connection with this precedent is as to whether family charges, such as jointures and portions, arising under a former settlement, can be overreached or provided for so as to give the purchaser a clear title. If the case is one in which the existing settlement, together with the prior settlement, can be treated as constituting one compound settlement under the Settled Land Act (as in *Re Ailesbury*, 37 Sol. J. 326, see above, p. 502, note), then according to that decision, upon the appointment by the Court of trustees of the compound settlement to receive the purchase-money, the conveyance of the tenant for life will, under s. 20 of the Act, override all the charges subsisting under the prior settlement, if in the nature of floating charges, and not sums specifically secured by mortgage. But if the existing settlement was made by the ultimate remainderman in fee under the prior settlement, after his estate had come into possession, or if the tenant for life under the prior settlement joined in resettling without preserving his old life estate, so that it became extinguished, then *Re Ailesbury* would not apply ; but although in such a case the powers of the Settled Land Act would not be available as a means of overriding the old charges, the express power of sale in the old settlement might still occasionally remain alive so as to enable that object to be effected. Failing this a clear title could not be made without an express release of the charges or provision being made for them under the Conv. Act, 1881, s. 5, or the Settled Land Act, 1882, ss. 5, 24, if applicable (see *infra*), and the purchaser might have to be content with an indemnity. As to removing a restraint on anticipation, under the Conv. Act, 1881, s. 39, to enable a married woman to consent to the sale, see *Re Ailesbury, ubi sup.* As to charges arising under a prior settlement.

The Conv. Act, 1881, s. 5, contains provisions for freeing land sold either by the Court or out of Court, from incumbrances, whether of annual or capital sums (see the definition of " incumbrances " in s. 2), on payment into Court of an amount which the Court considers sufficient to provide for the charge, with a margin for expenses, interest, and contingencies (except depreciation of investments) ; whereupon the Court is empowered, either after or without any notice to the incumbrancer, to declare the land to be freed from the incumbrance, and to make any order for conveyance, or vesting order, proper for giving effect to the sale, and to give directions for the retention and investment of the money in Court. See *Milford, &c., Co.* v. *Mowatt*, 28 Ch. D. 402. As to the procedure under this section, see Wolstenholme on the Act, p. 25. A vendor will not be compelled to make use of this provision to Sale of land free from incumbrances under Conv. Act, 1881.

(*d*) See note (*a*), p. 555.

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hds)," *subjt to a jointure rent-chge of* £—— *limd to C. & a term of* —— *yrs for securg the same, vested in D., & to a*

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discharge an incumbrance, where it would involve hardship to him, *Re Great Northern R. C.*, 25 Ch. D. 788. Recourse to this enactment is sometimes useful, where a release of or sufficient indemnity against an incumbrance cannot be obtained. In that case the conveyance will contain recitals of the order or orders for payment into Court, and declaring the land free from the charge, and appointing a person to convey, or vesting order (where this is necessary, which it would only be to get in a legal estate), and the payment into Court, such payment being expressed to be part of the consideration for the conveyance. The person (if any) appointed to convey, would join in the conveyance, and would, if a covenant against incumbrances by him is to be implied, be expressed to convey "under the said order of, &c.," see p. 439, note, and some words expressing that the property is free from the charge, would be added after the habendum.

Another mode of proceeding to avoid delay in completing the purchase, which would be available where the vendors are trustees, is to leave the application to the Court to be made after the conveyance, as indicated in the following clauses :—

Clauses for payment into Court to provide for charge of portions.

"*Recite creation of term for raisg portions. Devise to trees for sale subjt to the chge, & contract for sale.*

"And whas the sd sum of £—— raiseable for portions cannot be immedly dischged, & it has been agrd that the sum of £—— pt of the sd pchase-moy shl be set apart by the vendors for the ppose of providg the sum of £—— to be pd into Ct under the Conveyanceg & Law of Ppty Act, 1881, to answer the sd chge of portions & for paymt of costs, & that thrupon an order of the Ct shl be obtained dischging the hds comprd in the sd term of —— yrs from the sd sum of £——, & accdly that such trusts shl be decld as are hrinafter contd of the sum of £—— pt of the sd pchase-moy.

"*Testatum*, in conson of the sd sum of £——, *the whole pchase-moy*, to the vendors as such trees as afsd pd by the pchaser (the rect, &c.), *Convce to pchaser in fee*, dischged by means of the paymt into Ct hinafter provd for from the sd sum or sums not exceedg the sum of £—— raiseable for portions under the sd indre of, &c., & all intt payable in respt thof.

"And it is hby agrd & decld & the vendors do hby covt with the pchaser, his hrs & assns, that the vendors shl

ppal sum of £—— & intt chged thron by an indre, dated, &c., & expd, &c., for the portions of the yor chn of K., all of whom are now infants under the age of 21 *yrs, & to anor ppal sum of £——, &c.,* "wch rent-chge & term & respive ppal sums & intt override & are paramount to the uses & powers of the

forthwith out of the sd pchase-moy of £——, set apart the sum of £——, & deposit the same in their jt names in the —— Bank in trust to be applied as hinafter provd, & will hold the same in trust accdly, & will forthwith apply by summons or orwise to the Chancery Divon of the High Ct of Justice under the provons of the Conveyancg & Law of Ppty Act, 1881, for an order, & will endeavour to obtain an order givg leave to pay the sum of £—— into Ct to answer the sd sum of £—— raiseable for portions, & dischging the premes comprd in the sd term from the sd sum of £—— & the intt thof & all claims in respt thof, & will psuant to the sd order when obtained, apply the sd sum of £—— in makg paymt into Ct of the sd sum of £——, & in paying the costs of & consequent on such applicon, the vendors retaing & applying the balce (if any) as pt of their trust este, & that in case an applicon shall not within six calr months from the date hrof be made by the vendors for such order, it shl be lawful for the pchaser to apply for & obtain such order, & thrupon the sd sum of £—— shl be applied by the vendors in makg the paymt into Ct authorised by such order, & in paying all costs & expses incurred by the pchaser in & about obtaing the same, & that the sd sum of £—— shl not witht the consent in writg of the pchaser, be applied for any other ppose than the ppose hinbfe specified."

Power in Settled Land Act to shift charges.

Under the S. L. Act, 1882, ss. 5, 24, a mortgage or other incumbrance may, with the consent of the incumbrancer, be charged on another part of the estate in exoneration of the part sold; see *Re Stamford*, 43 Ch. D. 84; and a precedent for this in Vol. II., MORTGAGES.

Satisfied term.

(*a*) If the trustee of the jointure term has never acted or incurred any costs, his concurrence would be unnecessary; as on the release of the jointure, the term would, as to the land released, cease under the proviso for cesser (if any), or under 8 & 9 Vict. c. 112; but he is usually made a party to obtain his admission that he has no claim for costs, so as to preclude any question as to the term being satisfied. As to what is a satisfied term under the Act, see *Anderson* v. *Pignet*, 8 Ch. 180.

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sd settlemt," *settg forth the uses of the settlemt up to & includg the este of B.*, "with divers remrs over," *& the power of sale & of revocon of the uses, &c., & the power to give rects (if any), & (as pt of the ppty now to be conveyed was pchased with the pceeds of a sale under the power) also referrg to the trust for re-investmt of the sale-moys in the pchase of other land to be conveyed to the uses of the settlemt: Death of L., one of the trees of the settlemt:* AND WHAS in the yr —— the sd A., as survivg tree of the sd indre of settlemt, & with the consent of the sd B., applied certn moys in his hands arisg from the sale of pt of the hds comprd in the sd settlemt in the pchase of cern hds situate in the Coy of ——, includg the hds secondly hinafter descd & intd to be hby appted. *Recital of convce of the last-mentd premes to the uses of the settlemt: Contract for sale*, p. 407, *form* IV.:

Purchase of land under power.

Payment off of charges.

AND WHAS the sd ppal sum of £—— wch was a chge on the sd premes at the date of the sd settlemt of, &c., & the intt thron was in the yr —— pd off out of moys arisg from a sale of pt of the sd settled estes, & the only chges, estes, or intts now subsistg upon or in the sd hds first hinafter descd & appted, wch are prior & paramount to the uses of the sd settlemt, & wd therefore not be over-reached by an exercise of the power of sale thrin contd as afsd, are the sd jointure rent-chge of £——, limd to the sd C. by the sd ——, *prior instrumt*, & the sd term of —— yrs, vested in the sd D., for securg the same, & the sd sum of £——

Agreement to concur.

chged thron for portions by the sd, &c.: AND WHAS the sd C. has [C. & D. have resply] agrd to concur in these psnts, for the purpose of releasg the sd hds first hinafter descd & appted from the sd rent-chge (wch is secd on other ppty of ample value), [& the sd term for securg the same]: [AND

Jointure rent-charge to be secured on purchase-money.

WHAS the paymt of the sd jointure rent-chge is intd to be secd by a chge upon the sd pchase-moy & the investmts to be made thof under the trusts of the sd indre of settlemt, & the income thof in substiton for the sd hds & premes hby reled thfrom, wch chge is to be effected by an indre already engrossed & intd to be exted immedly after these psnts, but

so that the exon of such indre shl not be deemed necy to the validity of the rele hby made, or be material to the title of the premes first hinafter descd & appted (*a*)]: AND WHAS the sd B. has agrd to enter into such covt as is hinafter contd for indemnifying the sd E. in respt of the sd sum of £—— & intt, wch is secd on other ppty of ample value, & in respt of the succession duty payable upon the dece of the sd C.: NOW THIS INDRE WITNETH that in psuance of the sd recited contract & for effectg the sd sale, & in conson, &c., *pchase-moy pd to A.*, (the rect, &c.), the sd A. as survivg tree of the sd indre of settlemt (*b*), in exercise of the power for this ppose in the same indre, & in the sd indre of, &c., *the convce of after-pchased lands*, by reference to the sd indre of settlemt, resply contd as afsd, & of every other power enablg him in this behalf, by the diron of the sd B. directg as benefl owner (*b*), both hby revoke & make void all the uses, trusts, powers, & provons, by & in the sd indre of settlemt, & by & in the sd indre of, &c., by reference thto, resply, limd, decld, & contd of & concerng the respive hds first & secondly hinafter descd & intd to be hby appted, & doth hby appt that, *pcels in two pts*, p. 415, shl henceforth go & remain To THE USE of the sd E., his hrs & assns:

Indemnity against succession duty.

Witnesseth.

Revocation.

Appointment.

(*a*) Care should be taken that the deed giving the substituted security is not made a title deed.

(*b*) This implies a covenant against incumbrances by A., and full covenants for title by B., see pp. 439, 440; as to the mode of implying the covenants for title, if B. has only power to consent to or to request the sale, see p. 450, form XI., and note (*b*). The implied covenant for right to convey in this precedent is inaccurate, by reason of C. and D. joining in the conveyance, but not by the direction of B., see p. 450, note; and it might be better to import B.'s covenants by a separate clause, see p. 452. The usual form of express covenant for right to convey would be, "that he, the sd B., now has power to give such diron, *or*, 'consent,' *or*, 'to make such reqt,' as afsd, & that the sd A. now has power to appt the sd premes hby appted, & every pt thof, to the use of the sd E., his hrs & assns, in mner afsd." If B.'s covenants express or statutory extend to the acts of a prior owner, the proviso restricting them (see p. 452, form II., and note (*f*) on p. 453) should be inserted.

Covenants for title.

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Further witnesseth.

Release from jointure.

AND THIS INDRE FURTHER WITNETH that in psuance of the sd agrmt in this behalf & in conson of the premes the sd C., as mtgee (*a*), at the reqt of the sd B., doth hby rele [& the sd D., as tree, at the reqt as well of the sd B., as of the sd C., doth hby surrender & assn] unto the sd E., ALL & SINGR the hds & premes first hinbfe descd & expd to be hby appted, to the intent that the same may henceforth be dischged from the sd jointure rent-chge of £—— p.a. limd or secd to the sd C. by the sd, &c., & from every pt thof, & from all powers & remedies for securg the same, & all claims & demands in respt thof, [& that the sd term of —— yrs may become absolutely merged & extinguished in the freehd & inhance of the same premes] [*or if D. is not a pty*, that the sd term of —— yrs may cease as a satisfied term]; *Covt by B. with E.*, that he the sd B., his hrs, exs, or ads, will at all times hrafter keep the sd E., his hrs, exs, ads, & assns, effectually indemnified from & agst the sd ppal sum of £—— chged on the sd premes firstly hby appted under or by virtue of the sd indre, &c., & from & agst all intt due or to accrue due in respt thof or any pt thof, & from & agst all succession duty wch may become payable in respt of the sd premes firstly hby appted, or any pt thof, upon the death of the sd C., & from & agst all claims, demands, actions, pcdgs, costs, & expses whatsr, for or in respt of the sd ppal sum & intt & succession duty, or any pt thof resply. *Acknowcmt & undertakg by B. as to title deeds*, p. 459. IN WITS, &c.

Covenants by tenant for life to indemnify purchaser against charge and succession duty (*b*).

(*a*) It might be better to make the jointress give an express covenant against incumbrances; or the statutory covenant might be incorporated expressly as at p. 452.

Indemnity as to succession duty.

(*b*) The covenant of indemnity against the succession duty, which will become payable on the death of the jointress, should be inserted, as the jointure overrides the settlement, notwithstanding *Dugdale* v. *Meadows*, 9 Eq. 212, 6 Ch. 501; see above, p. 516, note (*a*). If the case admits of it, the indemnity might be strengthened by a charge upon or grant of powers of distress and entry on other land, whether already subject to the charges or not; but see as to such powers, p. 335, note. See further as to succession duty and estate duty, *ante*, p. 516.

XXXV.

CONVEYANCE *of* FREEHOLDS *by* TENANT *for* LIFE *and* TENANT *in* TAIL *as part of a* FAMILY ARRANGEMENT (*c*). PREC. XXXV.

PARTIES, A., *tenant for life*, 1; B., *tenant in tail*, 2; C., 3. *Recite seisin of A. & B. for their respve estes*, p. 400. AND WHAS in order to make provon for the sd C. & as pt of & in conson of a family arrangemt, the other pt whof is contd in & has been fully carried into effect by an indre bearg even date with & exted bfe these psnts & expd, &c., the sd A. & B. are desirous & have agrd to convey the sd hds to the sd C. in mner hinafter expd: AND WHAS although the sd indre of even date hwith is hinbfe refd to as formg a valuable conson for the convce intd to be hby made, it is nevs the intention of the sd A. & B. (as they do hby exply declare) that these psnts shl operate & take effect independently of that indre, & so that the same shl in no wise form pt of the title to the sd hds intd to be hby conveyed (*d*): NOW THIS INDRE WITNETH that in

Recitals. Family arrangement. Witnesseth.

(*c*) This, though not, strictly speaking, a conveyance on sale, may conveniently find a place here. As to family arrangements, see p. 61, note (*a*). The conveyance must be enrolled within six calendar months after execution, see the Fines & Recoveries Act, 3 & 4 Wm. 4, c. 74, s. 41. As to deeds barring entails, see *infra*, DISENTAILING DEEDS.

(*d*) See p. 557, note (*a*). In spite of this recital the other deed might possibly be called for to verify the statement that it created a valuable consideration, so as to prevent this deed from being impeachable as voluntary; and possibly also to show that the consideration did not make this deed liable to *ad valorem* stamp duty; but this might be avoided by getting the stamp adjudicated. So far as the implication of covenants for title by the use of the words "as beneficial owner" is concerned, it is conceived that a deed expressed to be for valuable consideration (*e.g.* "for divers good & valuable consons") though not so in fact, would be effectual against the grantor by estoppel; but where there is any doubt as to the deed being for valuable consideration it is better expressly to incorporate the statutory covenants, see p. 452, form XIII.

Consideration contained in separate deed. Covenants for title in voluntary deed.

PREC. XXXV

psuance of the sd arrangemt & in conson of the premes the sd A., **as benefl owner**, as to his este for his life in the hds hinafter descd, doth hby grt, & the sd B., **as benefl owner**, as to the remr in fee simple expectant upon the sd life este in the same hds & with the consent of the sd A. as protector of the settlemt, doth hby grt & confirm unto the sd C., *Pcels*, p. 415, *Habendum*, UNTO the sd C., his hrs & assns, dischged from the sd este tail & all other estes tail of the sd B. in the same premes & all remrs, reversions, estes, rts, intts & powers to take effect after the determinon or in defeasance of such este tail or estes tail TO THE USE of the sd C., his hrs & assns. IN WITS, &c.

Grant by tenant for life and tenant in tail.

Habendum.

Discharged from estate tail.

XXXVI.

PREC. XXXVI.

SURRENDER *of* FREEHOLDS *by* TENANT FOR LIFE *to* REMAINDERMAN *in fee* (*a*).

PARTIES, A., *tenant for life*, 1; B., *remrman*, 2. *Recitals showing the titles of the ptics*, p. 400, *form* VIII. *or* IX. AND WHAS the sd A. has agrd with the sd B. for the sale & surrender to him of the life este of the sd A., in the hds hby assured for the sum of £——. NOW THIS INDRE, &c., *conson*, *rect*, the sd A., **as benefl owner**, doth hby grt & surrender unto the sd B., *pcels*, p. 415: TO HOLD the same UNTO & TO THE USE of the sd B., his hrs & assns, for &

Contract.

Witnesseth.

Habendum.

(*a*) Although a tenant for life cannot divest himself of his powers under the Settled Land Acts, even by an out and out conveyance of his life estate (see the Act of 1882, s. 50 (1)), it seems that in the case in the text the statutory powers would be gone by the union of the life estate with the reversion in fee, and it is a question whether they could be kept alive by an express declaration against the merger of the life estate; and if not, any charges of jointures or portions still subsisting under the settlement could not afterwards be overridden on a sale, unless the settlement contains an express power of sale, which might still be available, although the consent of the tenant for life is required to its exercise; see *Alexander* v. *Mills*, 6 Ch. 124.

Effect of union of life estate and fee on powers of sale, &c.

durg the life of the sd A., to the intent that the este for life of the sd A. in the sd premes, may merge & be extinguished in the reversion & inhance thof, & that the sd B. may become seised of, or entled to the same premes for an este of inhance in fee simple in posson. In wits, &c. PREC. XXXVI.

XXXVII.

CONVEYANCE *of* Reversion *in fee of* Freeholds *to a* Purchaser. Covenant *by* Purchaser *to pay* Succession Duty (*b*). PREC. XXXVII.

Parties, A., *vendor*, 1; B., *pchaser*, 2. *Short recital of title of* A. *in reversion expectant on the dece of* X., *the tenant for life*, p. 398: And whas the sd A. has agrd with the sd B. for the sale to him for the sum of £—— of the reversion & inhance in fee simple of the sd A., expectant on the dece of the sd X., of & in the sd hds, & it has been further agrd that the succession duty payable in respt of the sd premes upon the dece of the sd X., shl be pd by the sd B., & that he shl enter into the covt in relon thto hinafter contd: NOW THIS INDRE WITNETH that, &c., *conson* (the rect, &c.), the sd A. as benefl owner doth hby grt unto the sd B., *pcels*, p. 415: To hold the same Unto & to the use of the sd B., his hrs & assns, subjt to the este for life of the sd X. in the same premes: *Covt by B. to pay succession duty* (*c*), p. 463, *& see note thto.* In wits, &c. Recitals. Contract. Witnesseth. Grant. To purchaser in fee.

(*b*) On a purchase of a reversion the powers of sale and leasing given by the Settled Land Act, 1882, to the tenant for life or other limited owner, which he cannot assign or release or contract not to exercise (s. 50), should be borne in mind. His statutory power of sale overrides any previous sale by the reversioner; *Wheelwright* v. *Walker*, 23 Ch. D. 752. As to whether it can be restrained or interfered with, see *Thomas* v. *Williams*, 24 Ch. D. 558. As to sales of reversions, see 31 & 32 Vict. c. 4, and cases decided thereunder, enumerated in the notes to *Chesterfield* v. *Janssen*, 1 W. & T., L. C. 624; *Fry* v. *Lane*, 40 Ch. D. 312. Sales of reversions.

(*c*) If "estate" duty may become chargeable under the Customs, &c., Estate duty.

XXXVIII.

PREC. XXXVIII.

RELEASE *of* REVERSION *in fee of* FREEHOLDS, *expectant on an* ESTATE FOR LIFE, *to the* TENANT FOR LIFE. COVENANT *to pay* SUCCESSION *duty* (*a*).

Parties, A., *remrman*, 1; B., *tenant for life*, 2. *Recitals as in the last Precedent, mutatis mutandis.* NOW THIS INDRE WITNETH, &c., *conson* (the rect, &c.), the sd A., as beneficial owner, doth hby grt & rele unto the sd B., *pcels*, p. 415: To HOLD the same UNTO & TO THE USE of the sd B. his hrs & assns subjt to the este for life of the sd B. in the sd premes, to the intent that the same may merge & be extinguished in the revon & inhance thof, & that the sd B. may be henceforth seised of or entled to the fee simple & inhance in posson thof; *Covt by B. to pay succession duty*, p. 463 (*b*). IN WITS, &c.

Witnesseth.

Habendum.

XXXIX.

PREC. XXXIX.

CONVEYANCE *by trustees of a* VOLUNTARY SETTLEMENT (*c*), *with the confirmation of the* SETTLOR, *of* REVERSION *in fee of* FREEHOLDS *to a* LESSEE

Act, 1889, 52 Vict. c. 7, s. 6, the covenant may have to extend to that duty; but if A. is parting with only part of his reversion it will have to be considered how that duty is to be borne.

(*a*) See page 560, note (*a*), as to the effect of the union of the life estate with the fee on the statutory or other powers of sale, &c.

(*b*) See note (*c*) last page.

As to title derived under voluntary deed.

(*c*) Although a voluntary settlement of land is liable under 27 Eliz. c. 4, to be defeated by a subsequent disposition for value by the settlor, it would cease to be so after a conveyance for value made by the persons claiming under it (see 3 Dav. Prec., pt. 1, p. 685); and the concurrence of the settlor in such a conveyance is therefore unnecessary so far as that Act is concerned, unless for the purpose of evidencing that he has not defeated the settlement, and obtaining his covenants for title. But as

for years (*d*). VARIATIONS *where* RESTRICTIVE COVENANTS *contained in the* LEASE *are kept alive* (*e*).

PARTIES, A. *&* B., *trees*, 1; X., *settlor*, 2; C., *lessee*, 3. *Recite lease by X. to C. of* "the messe & hds hinafter descd

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regards creditors the case is different; a conveyance on sale to a *bonâ fide* purchaser might perhaps be protected under 13 Eliz. c. 5, although the settlement itself is impeachable as made to defeat creditors; but the settlement may be liable to be avoided altogether by the Bankruptcy Act, 1883, s. 4, so that the conveyance to the purchaser would fall with it; and the only way (if there be any) of providing against this risk seems to be to obtain the concurrence of the settlor, so that the purchaser may get a title as on a purchase from him as well as from the trustees; but the efficacy even of this may be doubtful; see *Re Briggs*, [1891] 2 Ch. 127. The word "settlement" in the Bankruptcy Act extends to a deed of gift, though absolute.

(*d*) A purchase of the reversion in fee by a tenant for life of a lease renewable by contract or custom enures for the benefit of the remaindermen; *Phillips* v. *Phillips*, 29 Ch. D. 673; but there does not appear to be any authority for extending this doctrine to a lease not renewable, unless the tenant for life is also trustee or executor.

(*e*) If the conveyance is subject to restrictive covenants corresponding with those in the lease, the recital of the contract will be, "subjt to the restrictive covts by the sd C. & provons hinafter contd;" and the habendum will be, "subjt also to the condons & restrons mentd in the schdle hto as obligons bindg in perpetuity upon the hds hby assured;" and the following covenant will be added: "AND the sd C. hby covts with the sd A. & B., as owners of the —— este, their hrs & assns, that the sd C. & all psons claimg through or under him will at all times hrafter observe, pform, & fulfil with reference to the hds hby assured all the condons & stipulons contd in the schdle hto, AND FURTHER that if the sd lease & the term thby created be not effectually merged & extinguished by virtue of these psnts then & in such case the sd C. & all psons claimg under him will as the revoner or revoners expectant on the sd lease enforce at all times hrafter so long as the sd lease shl subsist all covts & condons in the sd lease wch correspond with any of the condons & stipulons contd in the schdle hto or the breach of wch wd be contrary to any of such condons or stipulons." Variations.

PREC. XXXIX.

& intd to be hby conveyed;" *voluntary convce of revon by X. to A. & B. in trust for sale; Contract for sale by A. & B. to C. of,* "the revon & inhance in fee simple expectant on the hinbfe recited lease of, &c., of & in the sd messe, &c.,"

Agreement of settlor to join.

p. 407: AND WHAS the sd X. has at the reqt of the sd A. & B. & for the satisfon of the sd C. agrd to join in these psnts for the ppose of confirmg the sd sale & the convce hby made

Witnesseth.

& orwise in mner hinafter appearg: NOW THIS INDRE WITNETH, &c., that in conson of the sum of £—— now pd by the sd C. with the consent & by the diron of the sd X. to the sd A. & B. as such trees as afsd (the rect, &c.), the sd A. & B., **as trees**, do hby grt & rele, & the sd X., **as benefl owner**, doth hby grt & rele & confirm unto the sd

Habendum.

C., *pcels*, p. 415: TO HOLD the same UNTO & TO THE USE of the sd C., his hrs & assns, subjt to the hinbfe recited indre of lease, & to the term thby created but to the intent that the sd term may be henceforth absolutely merged in & consold with the revon & inhance in fee simple of the sd premes expectant on the determinon of the sd term. IN WITS, &c.

XL.

PREC XL.

CONVEYANCE *of* FREEHOLDS *by equitable* TENANT FOR LIFE *and* REMAINDERMEN, *and a* TRUSTEE *in whom the legal estate is outstanding.*

Recitals.

PARTIES, A., *tenant for life*, & B., C., & D., *remrmen*, 1; E., *tree*, 2; F., *pchaser*, 3. *Recite will of X., under wch the ppty has become vested in E., in trust for A. for life, with remr to B., C., & D., as tenants in common in fee: Death of testor & probate*, p. 402: *Contract for sale*, p. 408; AND WHAS it has been agrd that the sd pchase-moy shl be pd to the sd pties hto of the first pt, jtly & upon their jt rect;

Payment of succession duty.

[AND WHAS the succession duty payable upon the dece of the sd A. in respt of the sd premes hby assured, has been

compounded for & pd & satisfied by the sd B., C., & D., prior to the exon of these psnts] (*a*): NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £——, to the sd pties hto of the first pt pd by the sd F. (the rect, &c.), the sd E., as tree, by the diron of the sd pties hto of the first pt, doth hby grt, & the sd A. as benefl owner, as to the este for his life, & all other, if any, his este or intt in the hds hby assured, doth hby grt, & the sd B., C., & D., each of them conveying as benefl owner of one eql third pt of the revon in fee simple [*or, if they are entld uneqlly*, as benefl owner of the pt or share of or in the sd premes to wch he or she is entled as hinbfe appears in revon] expectant on the life este of the sd A. in the sd premes, & as to all other, if any, their respive estes or intts thrin, do resply hby (*b*) grt & confirm unto the sd F., *pcels*, p. 415, *Habendum to F. in fee;* [*Acknowemt & undertakg by A. as to munimts in his posson & retained by him relatg to the fee, or to his life este only, & by B., C., & D. resply as to any munimts in the posson of & retained by them resply relatg to their revonary intts only*, p. 460.] (*c*). IN WITS, &c.

PREC. XL.

Witnesseth.

Grant.

(*a*) If the duty is not paid in advance, a covenant for payment should be inserted; see p. 464. As to the commutation of duty in respect of a reversion, see the Succession Duty Act, 1853, s. 41; and as to personalty, see 43 Vict. c. 14, s. 11; see also as to "estate duty," the Customs, &c. Act, 1889, 52 Vict. c. 7, ss. 5—9. Succession duty.

(*b*) If the interests of the parties of the first part are shown by the recitals, they may convey as follows (see p. 448, note):—

"And they, the sd pties hto of the first pt, each of them conveying as benefl owner of the respive este, share, or intt in the hds hby assured, to wch he or she is entled, as hinbfe appears, & all other (if any) his este or intt thrin, do resply hby, &c."

(*c*) See p. 456, note. The acknowledgment, &c., of the tenant for life as to the muniments relating to the fee will of course suffice, without the reversioners joining in it, and their doing so would be, in fact, inefficacious, as the deeds are not in their possession; see p. 456, note.

XLI.

PREC. XLI

CONVEYANCE *of freeholds by* TENANTS IN COMMON *having various interests.* VARIATIONS *where one of the vendors is an* INFANT (*a*).

Parties, A., *owner of share*, 1; B., & C., his wife, *owners of share*, 2; D. & E., *trees for sale of share*, 3; F., *tenant*

As to mode of conveyance by parties with various interests.

(*a*) In the case of the married woman C., it is assumed that the marriage and acquisition of the share were both prior to 1883, so that the law previous to the Married Women's Property Act, 1882, applies. As to conveyances by married women, see p. 535, note. As to the case of the sale by the executor G. under a power of sale to pay debts, see p. 482 note. As to the share of H. and K., it might be sold by H. as tenant for life under the Settled Land Act, 1882, the purchase-money being paid to the trustees of the settlement; but the course adopted in the text is simpler, as it enables trustees to be dispensed with.

As to infant.

If one of the vendors is an infant, his share may be conveyed by the "trustees of the settlement," if any, or otherwise by a person appointed by the Court, under the Settled Land Acts (see note, p. 511; and Precedent XXI., p. 521); which is the better plan; or with the sanction of the Court under the Settled Estates Act, 1877, if the case is within that Act (as to which see *Re Sparrow*, [1892] 1 Ch. 412); or (according to a plan sometimes adopted), the infant might be made a party, the other vendors or some of them covenanting for his execution, and his share of the purchase-money being paid to them or retained by the purchaser in the meantime. The following additions to the above Precedent are applicable to that case:—

Recital as to conveyance of share of infant.

"AND WHAS it has been agrd that the sd, *infant*, shl be made a pty to these psnts to the intent that he shl exte the same when he shl have attnd the age of 21 yrs, & that the sd other pties hto of the —— pts shl enter into the covt hinafter contd to procure such exon by him & orwise as hinafter mentd, And that the sum of £—— being the share of the sd, *infant*, of the sd pchase-moy shl in the meantime be retained by the sd N. & shl be pd to the sd, *infant*, his hrs or assns with intt at the rate of £—— p. c. p. a., from the date of these psnts, upon these psnts being duly exted or confirmed by & made bindg on the sd, *infant*, his hrs or assns as hinafter mentd, & that the sd N. shl be entled to

PREC. XLI.

for life of last-mentd share, 4 ; G., *exor with power of sale of share*, 5 ; H. & K., *tenant for life & remrman of share*, 6 ; L. & M., *coparceners of share*, 7 ; N., *pchaser*, 8 ; *Recite will of X., devisg premes to his chn at* 21, *&c., as tenants in common in fee ; Death & probate*, p. 402 ; *That X. left issue six chn all of whom attained* 21, *namely, A., C. the wife of B., F., P., Q. & R. ; Settlemt on marre of F. conveying his share to trees, D. & E., in trust for* [*or with a power of*] *sale with his consent ; Will of P. containg a chge of debts implying a power of sale in the exor, G. ; Death & probate ; Will of Q. devisg his share to H. for life, remr to K. in fee ; Death & probate ; Death of R. intestate leavg L. & M., his two daurs, coheiresses ;* [AND WHAS by the means afsd the sd pties hto of the first seven pts are now entld to or have power to dispose of the sd hds & premes in the respive shares & mner followg (that is to say), the sd A. is entld to one eql undivided sixth share in his own rt ; the sd B. & C. are entld to one other sixth share in rt of the sd C. ; one other sixth share is vested in the sd D. & E. as trees

Recitals.

How shares are now vested.

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the posson or rents & profits of the entirety of the sd premes from the date of these psents.

"And each of them the sd pties hto of the first pt, other than the sd, *infant*, doth hby covt with the sd N., his hrs & assns, that the sd, *infant*, upon attaing the age of 21 yrs, or in the event of his death, his hrs & also any other pson or psons claimg under him any este or intt in his sd share of the sd premes hby assured, shl forthwith or at any time thrafter upon the reqt of the sd N., his hrs or assns, but at the cost of the sd pties hto of the first pt, or some or one of them, & upon paymt of the share of the sd, *infant*, in the sd pchase-moy with intt as afsd, & witht any further sum of moy or conson being pd by or claimed from the sd N., his hrs or assns, exte these psnts, or such other assurce or instrumt for confirmg these psnts & the assurce & covts hinbfe contd, & makg the same bindg on the sd, *infant*, & his hrs & all psons claimg under him as afsd, as by the sd N., his hrs or assns, may be reasbly required."

Covenant that infant shall convey when of age.

PREC. XLI.

of the sd settlemt of, &c., in trust, with the consent of the sd F. to sell the same & give rects for the pchase-moy thof; the sd G., as exor of the sd P., deced, & by virtue of the chge of debts contd in his sd will as afsd, has power to sell one other sixth share & to give rects for the pchase-moy thof; one other sixth share is vested in the sd H. durg his life with remr to the sd K., in fee simple under the sd will of the sd Q. deced; & the remaing one sixth share is vested in the sd L. & M. in coparcenary as coheiresses of the sd R. deced (*a*)]; AND WHAS the sd pties hto of the first seven pts by virtue of their respive estes, powers, & intts, & as to the sd D. & E. in exon of the trust for sale contd in the sd indre of settlemt of, &c., with the consent (hby testified) of the sd F., & as to the sd G., in exercise of the power of sale vested in him under the will of the sd P. as afsd, have resply contracted with the sd N. for the absolute sale to him of the entirety of the sd hds & premes hby assured & the fee simple in posson thof, for the sum of £——: NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the sum of £—— now pd by the sd N. as follows, namely, the sum of £—— being one eql 6th pt thof to the sd A., the like sum of £—— to the sd B. & C., the like sum of £—— to the sd D. & E., the like sum of £—— to the sd G., the like sum of £—— to the sd H. & K., & the sum of £—— being one eql 12th pt thof to each of them the sd L. & M. (the rect of wch sd sevl sums so pd to them resply as afsd the sd sevl pties hto of the 1st, 2nd, 3rd, 5th, 6th, & 7th pts do resply hby acknowe) (*b*), the sd A. **as benefl owner** as to one eql 6th pt of the hds hinafter desed & intd to be hby assured doth hby grt, And the sd C. **as benefl owner** as to one other eql

Agreement for sale.

Witnesseth.

Consideration.

Conveyance of specified shares.

(*a*) The recital in brackets is unnecessary, but where the previous recitals are complicated it is sometimes useful to sum up the result in this way; and this recital might be made the basis of a short recital of the title, so as to avoid detailed recitals of the various instruments and events.

(*b*) If the vendors are all beneficial owners the purchase-money need not be apportioned by the deed; see p. 414, note.

6th pt of the same premes with the concurrce of the sd B., her husbd, doth hby grt, & the sd B., **as benefl owner** as to the same one 6th pt doth hby grt & confirm, And the sd D. & E. **as trees** as to one other eql 6th pt of the same premes with the consent (hby testified) of the sd F., do hby grt, & the sd F. **as benefl owner** as to the sd last-mentd one 6th pt doth hby convey & confirm, And the sd G. **as psonal representative** of the sd P. decd as to one other eql 6th pt of the sd premes, & in exercise of the power of sale vested in him the sd G. by virtue of the sd will of the sd P. & of every or any other power enablg him in this behalf doth hby appt & convey, And the sd H. **as benefl owner** as to the este for his life in one other eql 6th pt of the sd premes doth hby grt, & the sd K. **as benefl owner** as to the revon or remr in fee simple expectant on the life este of the sd H. of & in the same one 6th pt doth hby grt, And each of them the sd L. & M. **as benefl owner** as to one moiety of the remaing one eql 6th pt (being one eql 12th pt of the entirety) of the sd premes doth hby grt (*c*), And all the sd pties hto of the first

PREC. XLI.

General

(*c*) As to the covenants for title, &c., implied, see p. 438 *et seq.*, note, p. 448. It would in this case be simpler and shorter to frame the conveyance in the following form, the implied covenants of the beneficial owners being qualified by a proviso at the end of the deed, as follows (see p. 441, note ; p. 452) ; and in a case in which the interests of the parties are uncertain (*e.g.*, where they depend on a will of doubtful construction), this mode of conveyance must almost necessarily be adopted. See the next note :—

Covenants for title.

" The sd respive pties hto of the 1st, 2nd, 4th, 6th, & 7th pts **as benefl owners**, as & accdg to their respive shares, estes, intts & powers in or over the hds hinafter descd, &c., do resply hby grt, appt, & convey, & the sd D. and E. **as trees** of the sd indre of settlemt of, &c., as to one eql 6th pt of the same premes & with the consent (hby testified) of the sd F. do hby grt, And the sd G. **as psonal repve** of the sd P. decd, as to one eql sixth pt of the sd premes & in exercise, &c., doth hby appt & convey unto, &c.

Form of conveyance by persons having various interests.

" Provd always, & it is hby agrd & decld that the covts for the title to & further assurce of the sd premes hby assured

Proviso restricting

PREC. XLI. seven pts, as to all other (if any) the shares, estes, or intts of or in the sd premes, or any pt thof, wch they have resply power to convey or dispose of, do resply hby grt, appt, & convey (*a*), unto the sd N.; *pcels*, p. 415; *Habendum to N. in fee.* [*Acknowemts & undertakgs as to deeds retained, see* p. 460 *et seq.*] IN WITS, &c.

words of conveyance.

XLII.

PREC. XLII. CONVEYANCE *of* COPYHOLDS *by* EXECUTORS *or* TRUSTEES *under a* WILL *containing a mere* DIRECTION *for* SALE *of the* COPYHOLDS, *or a devise of them to such* USES *as the* TRUSTEES *shall appoint, and subject thereto to them in* TRUST *for* SALE (*b*).

Recitals. *PARTIES*, A. & B., *exs* [*trees*], 1; C., *pchaser*, 2. *Recite will, settg out fully the diron to the exs to sell the copyhds* [*or*

implied covenants for title. wch are implied by the assurce hby made on the pt of the sd respive pties hto of the 1st, 2nd, 4th, 6th, & 7th pts shl be limd as follows, namely, the covts of each of them the sd respive pties of the 1st, 2nd, & 4th pts to one eql 6th pt of the sd premes, the covts of the sd H. to the este for his life in one eql 6th pt thof, the covts of the sd K. to the revon or remr in fee simple expectant on the dece of the sd H. in the same one 6th pt, & the covts of each of them the sd L. & M. to one eql 12th pt of the sd premes."

Importance of inserting general words of conveyance. (*a*) Where the particular share or estate which each party is intended to convey is defined, as in the text, in order to limit the operation of the statutory covenants, there may be a considerable risk of miscarriage, through the interests of the parties being misstated, and the operation of the conveyance being thereby restricted; as the Conv. Act, 1881, s. 63, making a conveyance pass "all the estate" of the conveying parties might be held to be excluded by the expression of a contrary intention. The above general words of conveyance, which imply no additional covenant, are therefore added, see p. 448, note (*d*); and compare Precedent XL.

Admission of purchaser. (*b*) If the trustees or executors sell before the heir or devisees in trust are compelled by the lord to obtain admittance, the purchaser is entitled to be admitted without a previous admittance of the heir or trustees, thus saving a fine, whether the will contains a mere direction to the

the devise to such uses as the trees shl appt, & in default to them in trust for sale] *& the rect clause (if any)*, [*& the apptmt of exs*], *death & probate, & testor's seisin*, p. 396. And whas the sd A. & B., psuant to the diron for sale contd in the sd will as afsd, have agrd, &c., *contract for sale*, p. 407, "of the copyhd hds hby assured": NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c. (the rect, &c.), they the sd A. & B. **as such psonal repves [trees] as afsd** & in psuance of the diron for sale in the sd will contd as afsd, & of every or any power or authority enablg them in this behalf, do resply hby bargain, sell, & appt unto the sd C., *pcels*, p. 415, To hold the same Unto & to the use of the sd C., his hrs & assns, accdg to the custom of the sd manor, by & under the rents, fines, heriots, suits, & services, due & of rt accustomed for the same. In wits, &c. PREC. XLII. Witnesseth. Conveyance. Habendum.

XLIII.

CONVEYANCE *of* Copyhold Tenement *on the purchase thereof by the* Tenant for Life *of the* Manor *so as to* Merge *the* Tenure (*c*). PREC. XLIII.

Parties, A., *copyholder*, 1; B., *tenant for life of manor*, 2; C. & D., *trees of manor*, 3; *Recite will devisg a manor &* Recitals.

executors and trustees to sell (*The Queen* v. *Wilson*, 3 B. & S. 201), or a devise to such uses as the trustees should appoint (*Glass* v. *Richardson*, 9 Ha. 698, 2 De G. M. & G. 658). The conveyance is therefore effected by a deed operating by way of bargain and sale or appointment, perfected by admittance, without any surrender.

As the sale in this case is made under a direction or trust for sale, the case is within the Settled Land Acts, see the Act of 1882, s. 63, and the Amendment Act of 1884, ss. 6 (1) and 7, and the consent of the tenant for life of the proceeds of sale is not required, see p. 512, note; *a fortiori* if the sale were for payment of debts.

As to enfranchisement, see the Copyhold Act, 1887, s. 1.

(*c*) On the purchase of a copyhold tenement by the lord of the manor, the conveyance is properly made by deed of surrender as As to convey-

PREC. XLIII.

estes to uses under wch B. *is tenant for life in posson & containg usual powers of enfranchisemt & sale & exchange & reinvestmt with consent of tenant for life: Death & probate:*

Sales and enfranchisements.

AND WHAS sales of portions of the sd estes devised by the sd will & enfranchisemts of copyhd tenemts held of the sd manor thby devised have taken place under the powers of the sd will, or of the Settled Land Acts, 1882 to 1890, or orwise: *Recite seisin of A. of a copyhd tenemt held of the manor:*

Agreement for purchase.

AND WHAS the sd B. has agrd with the sd A. for the pchase of the customary fee simple & inhance of & in the hds intd to be hby surrendered & reled at the price of £——, wch is intd to be pd by the sd C. & D. by diron of the sd B., out of moys in their hands arisg from such sales or enfranchisemts as afsd: NOW THIS INDRE

Witnesseth.

WITNETH that in psuance, &c., & in conson of the sum of £—— now pd to the sd A. by the sd trees out of such moys as afsd by the diron of the sd B. (the rect, &c.), the sd A. **as benefl owner** doth hby surrender & rele unto the sd B. as tenant for life & lord of the sd manor of ——, *pcels*, p. 415: TO HOLD the same UNTO & TO THE USE of the sd B. to the intent that the customary tenure of the same premes may become merged & extinguished in the freehd thof wch is now subjt to the uses of the sd will as afsd. IN WITS, &c.

Surrender to tenant for life of manor.

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ance of copyhold tenement to lord of manor.

above, which should be entered on the court rolls. That the copyhold tenure can be effectually extinguished by a deed of release by the copyholder to the lord, see *Blemmerhassett* v. *Humberstone*, Hutt. 65, Sir William Jones, 41; *Zinzan* v. *Talmadge*, Pollexfen, 568, 569; Watkin on Copyholds, 430. If the manor is in settlement, the conveyance should be made to the trustees, if they have the legal estate, or otherwise (as in this case) to the tenant for life. Another method is for the tenant on the court rolls to surrender the copyhold tenement to the uses of the settlement of the manor. Having regard to the Settled Land Act, the purchase should be treated as made by the tenant for life, and the purchase money will be paid by the trustees by his direction; see p. 524, note. The trustees, though in this case they have no concern with the matter except to see that the deed is in proper form (see p. 524, note), and to pay the purchase money, seem proper parties.

XLIV.

CONVEYANCE *of the* EQUITABLE ESTATE (*a*) *in an* UNDIVIDED MOIETY *of* COPYHOLDS *by a* TENANT *in* COMMON *to his* CO-TENANT. PREC. XLIV.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *Recital of will*, *devisg copyhds*, "hinafter mentd," *to trees upon trusts*, *death of testor*, *probate & scisin*, p. 395; *Admittce of trees*, p. 386, "upon the trusts by the sd will decld concerng the same;" *Subseqt events*, *showg that A. & B. are entled to the equitable intt eqlly as tenants in common; Contract by A. for the sale to B.*, p. 407, *of*, "the undivided moiety of the sd copyhd premes, to wch he, the sd A., is entled in equity under the trusts of the sd will, & the inhance thof in posson accdg to the custom of the sd manor." NOW THIS INDRE WITNETH THAT in psuance, &c., & in conson, &c. (the rect, &c.), the sd A., **as benefl owner**, doth hby grt (*b*) unto the sd B., All that one undivided moiety, to wch the sd A. is entled in equity as afsd, of & in, *pcels*, p. 415: To HOLD the sd undivided moiety & premes hby grted UNTO & TO THE USE of the sd B. his hrs & assns, accdg to the custom of the sd manor, by & under the rents, &c., *as in Precedent* XLII. IN WITS, &c.

Recitals. Agreement. Witnesseth. Grant. Habendum.

(*a*) No fines are of course payable in respect of the devolution of an equitable estate in copyholds; *Hall* v. *Bromley*, 35 Ch. D. 642.

(*b*) If the parties were joint tenants, the conveyance would be by release.

XLV.

PREC. XLV.

DEED *of* ENFRANCHISEMENT *of* COPYHOLDS *by the Tenant for* LIFE *of the* MANOR. VARIATIONS *where the* MINERALS *are expressly* CONVEYED *or* RESERVED, *where the* COMMONABLE RIGHTS *are* EXTINGUISHED, *and for reservation of* SPORTING *Rights* (*a*).

PARTIES, A., *tenant for life*, 1; B., *tree*, 2; C., *copyhder*, 3. *Recital of settlemt of manor settg forth uses as far as limon to A. for life, & showg that B. is the tree within the Settled Land Acts & that a sole tree is empowered to act genlly; Admission of C. to copyhds*, p. 386; AND WHAS the sd A., as tenant for life of the sd manor under the sd recited indre of settlemt, & by virtue of the powers of the Settled Land Acts, 1882 to 1890, has agrd with the sd C. for the enfranchisemt of the sd copyhd premes in mner hinafter mentd in conson of the sum of £——, & it has been agrd that the mines & minls in or under the same shl be included in such enfranchisemt, *or*, "shl be reserved with the rt of workg the same & orwise," in mner hinafter appearg, & that the commonable rts existg in respt of the sd premes,

Recitals.

Agreement for enfranchisement.

As to enfranchisement by deed.

(*a*) It is the practice to enrol the deed on the court rolls. As to enfranchisement, see above, p. 505, note; and 2 Dav. Prec., Pt. 1, p. 386, note. It is generally simpler and better, where the manor is in settlement, for the tenant for life to enfranchise under the Settled Land Act, 1882; see ss. 3 (ii.), 4 (1, 6, 7), and above, p. 505, note; the circumstance (as in this case) of there being only one trustee not creating any difficulty where (as is usual) one trustee is authorised to act generally, see *Re Garnett Orme*, 25 Ch. D. 595, above, p. 507, note. It was becoming the practice before the Act to vest the power of enfranchisement in the tenant for life, so as to enable him both to convey and give a discharge for the consideration money, for which he was accountable to the trustees; under a power in that form, the procedure would be somewhat simpler than under the Act, as the concurrence of the trustees would be unnecessary. If the enfranchisement is effected under an express power, the conveyance would be by revocation and appointment of the use, as on a sale, see Precedent XXXIV.

shl be preserved [extinguished] as hinafter appears [& that such other reservons shl be made as are hinafter expd]. PREC. XLV.

NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c. (the rect, &c.), the sd A., as benefl owner, by virtue of the powers of the sd Act, & of every other power enablg him in that behalf, doth hby grt, *pcels*, p. 415 [Togr with the mines & minls in or under the same premes &] [Togr with all rts of common & commonable rts in, over, upon, or out of any common or waste lands of the sd manor to wch the sd C., his hrs or assns now is, or but for these psnts wd have been henceforth entled in respt of the sd premes intd to be hby enfranchised] [*or as the case may be*, except & reservg unto the sd A. & his successors in title, lords of the sd manor, all mines, minls & quarries of coal, stone, slate, ironstone, & other ores, mines & minls whatsr in & under the sd lands & premes intd to be hby enfranchised or any pt thof, togr with all such powers & liberties of gettg & workg the same & orwise in relon thto as are hinafter expd to be hby grted] [& all franchises, rts & royalties & all ancient fisheries & rts of fishg: AND ALSO all such liberties of chase & free warren & killg of game (if any) as have been htofore anciently used & enjoyed by the lords of the sd manor or to wch by law, grt or custom they are entled (*b*)]: To HOLD the same UNTO & TO THE USE OF the sd C., his hrs & assns, freed & for ever dischged of & from all rents, fines, duties, services, & other incidents of customary tenure [other than & except such as are hrin excepted & reserved]: [AND THIS INDRE ALSO WITNETH that in conson of the premes & by virtue of the powers of the Copyhd Acts, & of every or any other power, este, or intt in any wise enablg him in

Witnesseth.

Grant by lord.

Reservation of minerals.

Franchises. Sporting rights.

Habendum.

Further witnesseth.

Grant by copyholder of mineral rights (*c*).

(*b*) The reservation sometimes extends to "the rendering of suit of court according to the custom;" but this is void under the Statute of Quia Emptores, see *Bradshaw* v. *Lawson*, 4 T. R. 443. That customary rights are extinguished by an enfranchisement, unless re-granted, see *Tilbury* v. *Silva*, 45 Ch. D. 98; and see the same case for a full clause of enfranchisement.

(*c*) See 4 & 5 Vict. c. 35, ss. 82, 84; and 15 & 16 Vict. c. 51, s. 48; and as to minerals in copyhold lands, see 2 Dav. Prec., Pt. 1, p. 490, note.

PREC. XLV.

this behalf, he the sd C., as beneficial owner, Doth hby grt unto the sd A., & his succors in title, lords of the sd manor, full & free liberty & power, &c., *powers of gettg minls*, p. 425; [*if such be the intention, add*, "PROVD ALWAYS, & it is hby agrd & decld that all rts of common & commonable rts, &c., *as above*, shl henceforth be extinguished for the benefit of the sd A. & his succors in title under the hinbfe recited indre of settlemt]. *Clause restrictg liability of A. under statutory covts for title*, p. 452; *Acknowemt & undertakg by A. as to ct rolls & title deeds of manor* (*a*), p. 459; [*or, if so intd*, "PROVD ALWAYS that the sd A. & his succors in title, lords of the manor, shl not be required to produce any of the deeds or docts of title relatg to, or the ct rolls of the sd manor to the sd C., his hrs or assns, any law or usage to the contrary notwg."] IN WITS, &c.

Proviso as to commonable rights.

Proviso as to non-production of Court rolls, &c.

XLVI.

PREC. XLVI.

ASSIGNMENT *of* LEASEHOLDS *held under* SEVERAL LEASES *by a* TRUSTEE *for* CREDITORS *under a* LIQUIDATION *by* ARRANGEMENT, *with the* CONCURRENCE *of the* DEBTOR (*b*), *to* TENANTS *in* COMMON: *a* MORTGAGE *to a* BUILDING SOCIETY *being paid off out of the* PURCHASE-MONEY. VARIATIONS *where the Mortgage was made to a* SOCIETY *formed under*

(*a*) It is doubtful whether the purchaser is entitled to an acknowledgment at all. As to what his rights are in this respect, see *Re Agg-Gardner*, 25 Ch. D. 600. By the Copyhold Act, 1887, s. 48, the lord of the manor is empowered, when all the lands held of the manor have been enfranchised, to hand over the court rolls to the Master of the Rolls, persons interested having a right of inspection, &c.

(*b*) See the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 9, 18, and note, *ante*, p. 533. See also the Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), and the Land Charges, &c., Act, 1888 (51 & 52 Vict. c. 51), ss. 7—9. The debtor's concurrence is of course not necessary; compare Precedent XXVI.

the repealed BUILDING SOCIETIES ACT, *and since* INCORPORATED *under the* BUILDING SOCIETIES ACT, 1874. PREC. XLVI.

PARTIES, A., *tree for credors*, 1; B., *debtor*, 2; C. & D., *pchasers*, 3. *Recite leases*, p. 393; *Devolon of title to the debtor*, p. 395; *Mtge*, p. 387, *& further chge*, p. 390, *to* [*the trees of*] *a benefit bldg society: Receivg order agst B., & resolon for admon of ppty of B. under a scheme of arrangemt & apptmt of A. as tree witht a committee of inspon*, p. 405: AND WHAS by order of the sd A., the premes demised by the sd respive hinbfe recited leases, togr with other ppty, were, on the —— day of ——, put up for sale by public auction at, &c., in sevl lots, whof lots —— comprd the sd respive leasehd premes, & at such sale the sd C. was the highest bidder for & was decld the pchaser of lots ——, for the sum of ——: AND WHAS the sd C. bid at the sd sale on behalf of himself & the sd D., & the sd C. & D. are desirous that the sd premes shl be assned to them as tenants in common in mner hinafter appearg: [AND WHAS the sd —— Bldg Society was on the —— day of —— incorporated under the Bldg Societies Act, 1874]; AND WHAS the sum of £——, being the amt due to the sd Bldg Society under their sd respive mtge secs has, at the reqt of the sd A. & B., been pd by the sd C. & D. to [the trees of] the sd Society, & the sd mtge secs have been vacated by a statutory rect for the sd sum of £——, dated, &c., endorsed on the sd indre of mtge of, &c., & signed by the sd trees, *or*, "under the seal of the sd Bldg Society, countersigned by the secretary [manager]" (*c*); *Agreemt of B. to concur*, p. 534; NOW THIS INDRE WITNETH THAT for carryg the sd sale into effect, & in psuance of the sd respive agrmts,

Recitals.

Sale by auction.

Discharge of mortgage to building society.

Witnesseth.

(*c*) See 6 & 7 Wm. IV. c. 32, s. 5; 37 & 38 Vict. c. 42, s. 42; and 38 & 39 Vict. c. 9. Owing to the doubts which have arisen as to the effect of the statutory receipt on redemption (see *infra*, MORTGAGES), an express reconveyance is sometimes taken to ensure getting the legal estate. As to the vesting of property held in trust for a society incorporated under 37 & 38 Vict. c. 42, see that Act, s. 27, and 40 & 41 Vict. c. 63, s. 4.

Reconveyance of mortgage to building society.

PREC. XLVI.

& in conson of the sum of £—— pd by the sd C. & D. in mner follg, namely, £—— pt thof to the [sd trees of the] sd —— Bldg Society in mner afsd, & the sum of £—— the residue thof to the sd A. (the paymt & rect in mner afsd of wch respive sums of £—— & £——, makg togr the sd pchase-moy of £——, the sd A. & B. do resply hby acknowe), the sd A. **as tree**, doth hby assn, & the sd B., **as benefl owner**, at the reqt of the sd A. doth hby assn & confirm unto the sd C. & D., *pcels by reference to leases*, p. 419: To HOLD, &c., "as tenants in common in eql shares," &c., see p. 433; *Covts by C. & D., jtly & sevlly with A., if he is under any liability, & also as separate covts with B., for indemnity agst rent & covts of leases*, p. 462, *form* II. (*a*). IN WITS, &c.

Assignment.

Habendum.

XLVII.

PREC. XLVII.

ASSIGNMENT *by* HUSBAND *and* WIFE *and a* MORTGAGEE *of* RENEWABLE LEASEHOLDS *to which the* HUSBAND *is entitled in* RIGHT *of his* WIFE (*b*) *under a will, the* EXECUTOR *concurring to* ASSENT *to the bequest.*

Recitals.

PARTIES, A., *husbd*, "& B. his wife," 1; C., *mtgee*, 2; D., *exor*, 3; E., *pchaser*, 4. *Recite lease to X.: Will of X. bequeathg leasehds to B. lfe her marre: Death & probate*, p. 402: AND WHAS it has been the custom that the sd lease

Custom to renew lease.

(*a*) As to this covenant, see 1 Dart, V. & P. 629; above, p. 461, note.

(*b*) The concurrence of the wife is usual under the old law in an assignment of her leaseholds, though it is not absolutely necessary except where her interest is equitable only, in which case she must concur to release her equity to a settlement and acknowledge the deed; 1 Dart, V. & P. 10. In cases to which the Married Women's Property Act, 1882, applies, she can convey as a *feme sole*, and her husband's concurrence is not necessary (see p. 539, note). In either case she can covenant under the Act.

Concurrence of wife in assignment of her leaseholds.

PREC. XLVII.

shd be renewed at the expiron of every —— yr on paymt to the lessor of a fine & usual fees: AND WHAS the sd A. intermarried with the sd B. on the —— day of ——: *Recite mtge by A. & B. to C.*, p. 387: AND WHAS the sd A., with the approbon of the sd B., has contracted with the sd E. for the absolute sale to him of the sd leasehd premes for the residue of the sd term, & all other the este & intt of the sd A. & B., or eir of them thrin for the sum of £——; *State of mtge debt & agrmt of C. to concur*, p. 410; *Agrmt of D. to concur*, p. 411, *form* XXI.: NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c. (the rect, &c.), (£—— *being pd to C. by the diron of A. & B.* "with the privity of the sd D," & £—— *being pd to A.* "with the like privity,") the sd C. **as mtgee** at the reqt of the sd A. & B. doth hby assn, & the sd D. **as psonal repve** of the sd X. deced at the like reqt doth hby assn & confirm, & each of them the sd A. & B. **as benefi owner** doth hby assn & confirm unto the sd E., *pcels*, p. 419, with the benefit of all such rt or claim to the renewal of the sd lease as may be subsistg; *Habendum to E.*, p. 436, *form* XIV., *free from mtge, form* VIII., p. 434. *Covt by E. with A., & separately with D., to pay rent, &c., & indemnify* "the sd A. & B., & each of them, their & each of their hrs, exs, & ads, & also the sd D., his hrs, exs, & ads, & the este & effects of the sd X. deced," p. 461. [*Acknowemt & undertakg by A. & B. as to deeds*, p. 459 (*c*).] IN WITS, &c.

Contract.

Witnesseth.

(*c*) See pp. 454, 537, note (*b*); p. 539, note (*d*).

XLVIII.

PREC. XLVIII.

ASSIGNMENT *of* PART *of the Property comprised in a* LEASE *at an* APPORTIONED RENT. *Mutual* COVENANTS *and Cross* POWERS *of* DISTRESS *and* ENTRY, *to secure* PAYMENT *of the apportioned parts of the* RENT (*a*).

Recitals. *PARTIES*, A., *vendor*, 1; B., *pchaser*, 2. *Recite lease*, p. 393, *of* "the hds hby assnd, togr with other hds;" *Agrmt for sale*, p. 407, *of*, "the —— & hds hby assned,

Agreement. being pt of the premes demised by the sd indre of lease, subjt to the yrly rent of £——, pt of the sd yrly rent of £——, & to the covts by the lessee & condons contd in the sd indre of lease, & henceforth to be pformed & observed in respt of the same premes:" And it has been agrd that the rent of £——, being the residue of the sd rent of £——, shl henceforth be pd by the sd A., in respt of the demised premes retained by him, & that these psnts shl contain the

Witnesseth. covts, powers, & provons hinafter expd: NOW THIS INDRE, &c., *conson* (the rect, &c.), *assnmt by A.* "**as benefl owner**" *to* B., *pcels set out fully, followg as nearly as may be the description in the lease*, "being pt of the hds & premes comprd in & demised by the hinbfe recited indre of lease";

As to cross powers of distress and entry, &c. (*a*) As to the apportionment of rent, see p. 56, note. It is probable that a power of distress, given by way of indemnity in this and other similar cases, is affected by the Bills of Sale Acts; see *Pulbrook* v. *Ashby*, 56 L. J. N. S. Q. B. D. 376; 35 W. R. 779; *Stevens* v. *Marston*, 39 W. R. 129, and it is also a question whether the powers of distress and entry, if unrestricted as to time, may not be obnoxious to the rule against perpetuities, although the property is leasehold; see the remarks above, p. 335, note, as to this question, with reference to perpetual rents. It might be an advantage to supplement the indemnity given by each party by charging it on his holding.

It has been held in *Johnson* v. *Wild*, 44 Ch. D. 146, that an assign of part of the land in lease, who pays the whole rent, has no right to contribution from an under-lessee of another part, the original lessee having covenanted in both cases to pay the rent and to indemnify, but having subsequently become bankrupt.

PREC. XLVIII.

Habendum UNTO the sd B., his exs, ads, & assns, henceforth for the residue now unexpired of the sd term of —— yrs, subjt to the paymt as from the —— day of ——, of such proportions as is hinafter mentd of the sd rent of £—— reserved by the sd indre of lease, & to the covts by the lessee (other than for paymt of the sd entire rent), & condons thrin contd & henceforth to be pformed & observed in respt of the sd premes hby assned, PROVD ALWAYS & it is hby agrd & decld that the sd rent of £—— shl as from the sd —— day of —— be & the same is hby apportioned as follows, namely, the yrly rent of £——, pt thof shl be chged exclusively upon & payable out of the sd premes hby assned in exoneron of the residue of the sd premes comprd in the sd lease & the yrly sum of £——, the balce of the sd rent of £—— shl be chged upon & payable out of the residue of the sd premes in exoneron of the premes hby assned, *Covt by A. for paymt of his apportioned pt of rent & pformce of covts in the lease affectg ppty retained, & for the indemnity of B.*, "& the premes hby assned," p. 461: PROVD ALWAYS, & it is hby agrd & decld, that if & whenever the sd B., his exs, ads, or assns, or his or their tenant or tenants shl be called upon to pay & shl pay the sd appor-

Habendum.

Apportionment of rent.

Powers distress and entry (*b*).

(*b*) The cross covenants and powers, &c., might be combined as follows:—

"And each of them the sd A. & B. doth hby for himself, his hrs, exs, ads, & assns covt with & grant to the other of them his exs, ads, & assns as follows (namely) that he the covtg pty his exs, ads, or assns will henceforth pay the apportioned pt of the sd yrly rent wch ought to be pd by him or them as hinbfe provd & pform & observe the covts by the lessee (other than for paymt of the sd entire rent of £——) & condons contd in the sd lease so far as the same relate to his or their portion of the sd premes thby demised, And will at all times keep the other of them the sd A. & B. his exs, ads, and assns indemnified agst all actions, pcdgs, claims & demands occasd by the non-paymt of such apportioned pt of the sd rent or the breach of any of such covts or condons, AND FURTHER that if & whenever the other of them the sd

Variation where cross covenants and powers, &c., are combined.

PREC. XLVIII

tioned yrly rent of £—— hinbfe covted to be pd by the sd A. in respt of the premes retained by him as afsd, or any pt thof, or shl incur any costs, damages, or expses by reason of the non-paymt thof, or of any breach by the sd A., his exs, ads, or assns, of the covts or condons contd in the sd indre of lease & affectg the premes retained by him the sd A., then it shl be lawful for the sd B., his exs, ads, or assns, into the sd last-mentd premes or any pt thof, to enter & distrain as landlords may do for rent reserved upon leases, & also (by way of addonal remedy) to enter upon & remain in the posson or rect of the rents & profits of the same premes until by the means afsd or orwise the sd yrly rent of £—— so in arrear, & all costs, chges, & expses occasd to the sd B., his exs, ads, or assns, by the non-paymt thof, or by the breach or non-pformce by the sd A., his exs, ads, or assns, of any such covts or condons as afsd (as the case may be) shl have been fully pd & satisfied. *Covt by B. for paymt of apportioned rent & pformce of covts in lease affectg* "the sd premes hby assned," *& for the indemnity of A.*, "& the premes retained by him as afsd," p. 461; *& grt by B. to A. of powers of distress & entry, similar, mutatis mutandis, to the covts & powers entd into & given by A.* (*a*), And it is hby agrd & decld that all moys wch may become payable to eir of them the sd A. & B., his exs, ads, or assns, under the respive covts of indemnity hinbfe

Monies payable under indemnity

A. & B., his exs, ads, or assns, or his or their tenant or tenants, shl be called upon to pay & shl pay such apportioned rent as last afsd or any pt thof or shl incur, &c., &c., *similar alterons being made throughout.*"

(*a*) If the lease be for more than 21 years unexpired, the following may be added to avoid the doubt as to perpetuity:—

Restriction of powers of distress, &c., as to time.

"Provd always & it is hby agrd & decld that the respive powers of distress & entry hinbfe given to the sd A. & B. resply & their respive exs, ads, & assns shl be restricted to the lives of them the sd A. & B. & the survor of them & 21 yrs after the dece of such survor, and such further period for wch the same may lfully be so given."

contd shl be a chge upon the portion of the premes comprd in the sd lease belonging to the other of them, his exs, ads, or assns, & be recoverable accdly by sale or such other means as may be available in that behalf under the Conveyancg & Law of Ppty Act, 1881, or orwise. [*Acknowemt & undertakg as to the lease & munimts, to be entd into by A. if they are retained by him, or orwise by B.*, p. 459.] IN WITS, &c. PREC. XLVIII. to be a charge (*b*).

XLIX.

ASSIGNMENT *of* PART *of the* PROPERTY *in a* LEASE *which has already been* ASSIGNED *at an* APPORTIONED RENT. PREC. XLIX.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *Recite lease*, p. 393; *Assignmt to* K. *of pt of the leasehds at an apportioned rent*, p. 395, *form* XXXIX.; *Devolon of title*, p. 395, *to* "the hds hby assned" *to* A., "for the residue of the sd term of —— yrs, subjt to the apportioned rent of £—— chged thron by the sd indre of, &c., & to the covts & condons contd in the sd lease so far as the same relate to the same hds, & with the benefit of & subjt to the covts & provons contd in the sd indre of assnmt of, &c., as to the apportionmt of the sd entire rent of £——, & orwise;" *Agreemt for sale*, p. 407, "for the residue of the sd term, subjt to the sd apportioned rent of £——, & with the benefit of & subjt to the covts & provons contd in the sd indre of assnmt: NOW THIS INDRE WITNETH, that in psuance, &c., *conson* (the rect, &c.), the sd A., as beneficial owner, doth hby assn unto the sd B., *pcels*, p. 419: *Habendum*, p. 436, *form* XIV., *with variation in note; Covt* Recitals. Witnesseth.

(*b*) This, unless merely incidental to the main purpose of the deed, might make it liable to a mortgage stamp; but the point is of small moment.

PREC. XLIX.

by B. with A. to "pay the apportioned rent of £——, & pform & observe the covts & agrmts on the pt of the sd K., & condons reserved by & contd in the sd indre of assnmt, & will at all times keep the sd A., &c.," p. 461, *form* I. [*Acknowemt & undertakg as to munimts*, p. 459]. IN WITS, &c.

L.

PREC. L.

ASSIGNMENT *of* LEASEHOLDS *sold in* LOTS *to purchaser of* LARGEST LOT *on* TRUST *to grant* UNDERLEASES *to other purchasers.*

Recitals. Sale in lots.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *Recite lease*, p. 393; [*Devolon of title to A.*, p. 395]: AND WHAS the sd A. has recently sold the premes comprd in the sd lease to the sevl psons in the respive lots for the respive sums, & subjt to the apportioned rents specified in the schdle hto; & it was agrd on the sd sales that the sd A. shd assn all the premes comprd in the sd lease to the sd B., & that he shd exte to each other pchaser such underlease of his lot as hinafter mentd: NOW THIS INDRE, &c., *conson*, (the rect, &c.), the sd A., **as benefl owner**, doth hby assn unto the sd B., *pcels by refernce to lease*, p. 419, TO HOLD the same, *subjt to entire rent & covts, &c., of the lease*, p. 436, *form* XIV., as to the premes comprd in lot 1, as descd in the schdle hto, for the absolute use & benefit of the sd B., his exs, ads, & assns, And as to each of the other lots descd in the sd schdle hto, UPON TRUST at any time at the reqt of the sd A., his exs, ads, or assns, to exte a pper underlease thof, unto & at the cost of the pchaser thof, to commce from the —— day of ——, & to be for the residue of the sd term of —— yrs, except the last day of such term, at the yrly rent mentd in the schdle hto as apportioned on such lot, such rent to commce & be computed from the sd —— day of ——, & such underlease shl contain the covts & provons follg,

Witnesseth.

Habendum.

Upon trust to grant underlease.

that is to say, *give epitome of covts, &c., see next Precedent, or,* "such underlease shl be in the form contd in the 2nd schdle hto," with such modificons as the circes of each case may require: And it is hby agrd & decld that until each such underlease shl be grted, the sd B., his exs, ads, & assns, shl stand possed of the lot to be comprd thrin, upon trust for the sd A., his exs, ads, & assns, subjt in equity to the paymt, pformce, & observce by the sd A., his exs, ads, & assns, of the rent & covts by the lessee, & condons to be reserved by & contd in such underlease as hinbfe provd, & subjt to the agrmt for the sale thof hinbfe mentd; *Covts by B. with A. to pay rent & pform covts in lease,* p. 461. In wits, &c. PREC. L. Declaration of trust.

[*Schdle in columns, containg a short description of each lot, pchasers' names, the rents apportioned on, & pchase-moy for, each lot.*]

LI.

UNDERLEASE *to a* Purchaser *of* Part *of* Leaseholds *held under one lease, and sold in* Lots. *The* Lease *having been* Assigned *to another* Purchaser *at the same sale. To accompany* Last Precedent. PREC. LI.

Parties, A., *vendor,* 1; B., *pchaser of one lot, assnee of lease,* 2; C., *pchaser of anor lot,* 3. *Recite lease,* p. 393, *of* "the hds hby demised togr with other hds;" *Devolon of title, if any, to A.,* p. 395; And whas the sd A. has agrd with the sd C. for the sale to him for the sum of £—— of the hds hby demised, wch form pt of the premes comprd in the sd lease, at the apportioned rent of £——: And whas upon the treaty for the sd sale it was agrd that the sd A. shd assn the whole of the premes comprd in the sd lease to the sd B., for all the residue of the sd term of —— yrs thby Recitals. Agreement.

PREC. LI

grted, & subjt to the sd rent thby reserved, & to the covts & condons thrin contd, & that the sale of the portion of the premes agrd to be sold to the sd C., as afsd, shd be effectuated by the sd B. extg an underlease thof to the sd C., at the sd apportioned rent of £—— for the term, & subjt to the covts & provons & orwise as hinafter expd; AND WHAS in psuance of the sd arrangemt, the sd premes comprd in the sd lease have been assned by the sd A. to the sd B., by an indre dated, &c., & exprd, &c., but upon trust to grt such underlease to the sd C., as hinbfe mentd: NOW THIS INDRE WITNETH that in psuance, &c., *conson, pchase-moy pd to A. by C.* (the rect, &c.), the sd B., by the diron of the sd A., doth hby demise, & the sd A. doth hby confirm unto the sd C., *pcels*, p. 415, "being pt of the premes comprd in the sd lease," (*a*), TO HOLD the same UNTO the sd C., his exs, ads, & assns henceforth for all the residue now unexpired of the sd term of —— yrs grted by the sd lease, except the last day thof; *Reservon to B. of rent apportioned on C.'s lot; Covts by C. with B. to pay such apportioned rent, & to pform covts in head lease (other than the covt for paymt of rent) so far as the same affect the ppty demised to C. & to indemnify B. agst breaches of such covts, & not to forfeit the head lease; And provo for re-entry on non-paymt by C. of his apportioned rent, or breach of any covt by him, see* LEASES; *Covts by B. with C. that B.* "will during the sd term pay the rent reserved by the sd lease on the first day on wch the same shl be payable, & will pform & observe all the covts & agrmts on the pt of the sd, *origl lessee*, & condons contd in the sd lease so far as the same affect the premes comprd in the sd lease other than the sd premes hby demised;" *Not to do anything to forfeit the head lease*; *Covt by B. with C. for quiet enjoymt* (*b*), *see* LEASES.

Assignment.

Witnesseth.

Demise.

Habendum.

(*a*) The clause in the Conv. Act, 1881, s. 63, making a conveyance pass "all the estate" of the grantor is of course excluded in the case of a lease by the expression of a contrary intention, notwithstanding the definition of "conveyance" in s. 2.

(*b*) As this is a "demise at a rent," covenants for title, &c., cannot be

[*Acknowemt & undertakg by B. as to prodon, &c., of lease,* p. 459.] IN WITS, &c. PREC. LI.

LII.

UNDERLEASE *for effectuating the sale to a* LIMITED COMPANY *of* MINING PROPERTY (*c*) *held under a* LEASE *containing a* COVENANT *against* ASSIGNING *or* UNDERLETTING *without the* LESSOR'S LICENCE, *which is refused as to an Assignment. The* PURCHASE-MONEY *being payable by* INSTALMENTS. ASSIGNMENT *of* FIXED MACHINERY, *&c., belonging to the* VENDOR. PREC. LII.

PARTIES, A., *vendor*, 1; The —— Co., Limd (hinafter called the Co), 2. *Recite lease of mining ppty*, p. 394, *containg a power to the lessee to determine it on notice, & a covt agst assng or underletty witht license:* AND WHAS the sd A. has agrd with the Co for the sale to them of the sd premes comprd in the sd indre of lease, & the fixed machy thron for the sum of £—— & of the movable machy & plant & mining stk thron wch are transferable by delivery for the sum of £——: AND WHAS it has been agrd that the sd sum of £——, *the pchase-moy of the lease & fixtures*, shl be payable as follows (that is to say), £—— upon the exon of these psnts, & the residue thof by four annl instalmts of £—— each on the —— day of ——, &c., with intt on the ppal sum for the time being remaing unpd at the rate of —— p. c. Recitals. Agreement for sale. The purchase-money to be paid by instalments.

implied by making A. and B. demise, &c., as "trustee" or "beneficial owner," see the Conv. Act, 1881, s. 7 (5); but as the purchaser, although only a lessee, would have the benefit of the vendor's covenants contained in the assignment to B. (see the Act, s. 7 (6)), no further covenants on the part of A. are required, and the ordinary lessor's covenant by B. for quiet enjoyment will suffice. Covenants for title.

(*c*) As to the notice necessary on change of ownership of a mine, see the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 36 (iv.), s. 75.

PREC. LII.

Security for payment of instalments.

p. a., to commce from the date of these psnts, & to be payable annlly with the sd instalmts of ppal: AND WHAS it has been agrd that the paymt of such four instalmts of pchase-moy & intt shl be secd by a lien or chge upon the sd leasehd premes, & by the covt of the Co as hinafter expd (*a*) [*or, if so intd*, shl be secd by the covt of the Co, but that the sd A. shl not retain any lien or chge upon the sd leasehd or other premes for the same]: AND WHAS the landlords of the premes demised by the sd hinbfe recited indre of lease have refused to consent to an assnmt thof but have given their consent in writg to the underlease of the same premes intd to be hby made, & it has been agrd that the sale thof to the Co shl be effectuated by the grt of such underlease & orwise in manner hinafter expd: AND WHAS the sd movable machy & plant & mining stk are intd to be delivered by the sd A. to the Co on paymt by them to him of the sd sum of £—— for the pchase thof (*b*): NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the sum of £——, pt of the sd pchase-moy of £——, *the price of the leasehds & fixtures*, now pd by the Co to the sd A. (the rect, &c.), & of the covt by the Co hinafter contd for paymt of the residue of the sd last mentd pchase-moy, & intt for the same, the sd A. doth hby demise unto the Co ALL & singr the lands, messes, bldgs, mines, minls, liberties,

Refusal by landlords to consent to assignment.

Movable machinery to be delivered.

Witnesseth.

Demise.

Parcels.

(*a*) The unpaid purchase-money would usually be secured by a mortgage.

As to apportionment for stamp duty.

(*b*) The purchase-money should be apportioned and the movable plant, &c., excluded from the assignment, to save stamp duty. The mere recital of the sale and payment of the purchase-money of the movable plant would operate as a transfer on sale so as to render the deed liable to duty under the head "Conveyance" in the Stamp Act, 1891, 54 & 55 Vict. c. 39, were it not for the exception under the head "Agreement" of "any agreement, &c., for the sale of goods;" *Phillips* v. *Gibbons*, 5 W. R. 527; *Horsfall* v. *Hey*, 2 Ex. 778. Although such a recital would not in this case make the deed chargeable, it is better to recite the delivery of the movable plant, &c., and the payment of the purchase-money for the same as *intended* to be done, so as to avoid any question as to apportioning the purchase-money for the purpose of conveyance and stamp duty, see p. 369, note.

licenses, powers, rts, & premes comprd in, or expd to be grted or demised by the sd hinbfe recited indre of lease, To HOLD the same UNTO the Co & their assns for the residue now to come of the sd term of —— yrs, except the last day thof, determinable nevless as hinafter mentd, SUBJT to the exceptions & reservons contd in the sd lease, & SUBJT also to & chged with the paymt to the sd A., his exs, ads, & assns, of the sd four unpd instalmts of the sd pchase-moy of £——, amtg to £—— each & intt psuant to the covt of the Co hinafter contd [*or, if so intd,* free & dischged from any lien or chge in favour of the sd A., for the sd four unpd instalmts of the sd pchase-moy, or the intt for the same], YIELDG & PAYING therefor unto the sd A., his exs, ads & assns, durg the sd term hby grted, the same or the like rents & royalties as were by the hinbfe recited indre of lease reserved or made payable in respt of the sd premes, & to be pd or rendered upon or at the same or the like days or times, & in the mner thby provd: AND SUBJT to the observce & pformce by the Co & their assns of the covts on the pt of the lessees & provons in the sd lease contd (other than the respive covts for paymt of the sd rents & royalties, & restrictive of the rt of the lessees to assn, underlet, or pt with the sd premes): AND THE SD A. doth hby, so far as he is authorised to do so witht the lessor's consent, declare that he, his exs, ads, & assns, will stand possed of the sd last day of the sd term of —— yrs grted by the sd lease IN TRUST for the Co & their assns: AND THE Co do hby for themselves & their assns covt with the sd A., his exs, ads, & assns, that they, the Co & their assns will, durg the sd term hby grted, pay or render to the sd A., his exs, ads, & assns, the sevl rents & royalties hinbfe expd to be hby reserved on or at the respive days or times, & in the mner, on at or in wch the same are or ought to be pd or rendered as afsd clear of all dedons: AND ALSO WILL, durg the sd term hby grted, pform & observe all the covts & agrmts by the lessee & provons contd in the sd lease (except as hinbfe mentd): AND WILL at all times keep indemnified

Habendum.

Reddendum.

Declaration of trust by vendor.

Covenants by company.

To pay rent.

Perform covenants.

Indemnify vendor.

PREC. LII.

the sd A., his hrs, exs, ads, & assns agst all actions, pcdgs, costs, damages, claims, demands, & liability for or in respt of any breach of any of the sd covts, agrmts, & provons (except as afsd): AND THE SD A. DOTH hby covt with the Co & their assns, that he, the sd A., his exs, ads, or assns, will, durg the sd term hby grted, duly pay or render the respive rents & royalties reserved by, or payable under the sd lease: AND ALSO that he, the sd A., his exs or ads will, at any time, if reqted so to do by the Co or their assns, use his or their best endeavours at the expse of the Co or their assns to procure the license of the landlords to an assnmt to or in trust for the Co or their assns of the premes hby demised: AND IN THE EVENT of such license being obtained, will exte such assnmts or instrumts as may be required by & at the expse of the Co or their assns for assng or assurg the sd premes to or in trust for the Co or their assns: AND ALSO WILL at any time, if reqted so to do by the Co or their assns, & at their expse, for the ppose of determing the sd lease, give such notice to the landlords thof as is in that behalf provd by the sd lease, but except upon such reqt of the Co or their assns, will not give any such notice whby the sd lease may be determined: AND ALSO WILL not at any time except by givg such notice upon reqt to determine the same as afsd, do or knowingly suffer any act or thing whby the sd lease may be invalidated or become void or liable to forfeiture: *Covts. by A. for title*, p. 442, *substitutg* "demise" *for* "assn" *& omitty the pts relatg only to freehds & copyhds* (*a*): AND THIS INDRE ALSO WITNETH that in further psuance of the sd agrmt & for the consons

Covenants by vendor.

To pay rent.

Endeavour to procure license to assign.

To assign.

Give notice on request to determine.

Not to invalidate lease.

Further witnesseth.

Covenants for title in lease.

(*a*) This being a demise at a rent, is not within the Conv. Act, 1881, s. 7, see sub-sec. 5, and p. 441, note, p. 586, note; so that express covenants for title must be inserted; or the statutory covenants might be expressly incorporated by making A. demise "as benefl owner, to the intent that the same covts by the sd A. for the title to & further assurce of the premes hby demised, may be implied as if a demise at a rent were not excepted out of section 7 of the Conveyancg & Law of Ppty Act, 1881."

afsd, the sd A., **as benefl owner**, doth hby assn unto the Co PREC. LII.
ALL such (if any) of the bldgs, erections, furnaces, forges, Assignment.
foundries, rails, trams, turntables, weighing machines, Fixed machinery.
waggons, steam & other engines, gins, machy, & fixtures, in, upon, or affixed to the sd premes comprd in the sd lease, as are the absolute ppty of the sd A., but are incapable of being transferred to the Co by delivery, To HOLD the same Habendum.
UNTO the Co & their assns absolutely: AND THE Co do hby Covenant by company to pay unpaid purchase-money.
covt with the sd A., his exs, ads, & assns, that the Co or their assns will pay to the sd A., his exs, ads, or assns, the sum of £——, being the balce remaing unpd of the sd pchase-moy, with intt thron at the rate of —— p. c. p. a., to be computed from the date of these psnts, in mner follg (that is to say), the sum of £——, pt of the sd ppal sum, on the —— day of —— next, &c., & the intt on the ppal sum for the time being remaing unpd to be pd with each of such instalmts of ppal [*Acknowemt by the Co to A. as to prodon of lease*, p. 459]. IN WITS, &c.

LIII.

ASSIGNMENT *of an* AGREEMENT *for* BUILDING LEASES. PREC. LIII.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *Recite agrmt by* Recitals.
K. to grt a lease or leases to A. "of certn pces of land thrin Building agreement.
desed, situate at, &c., for the term of —— yrs from the —— day of —— at the yrly rent or rents thrin mentd, & subjt to the covts by the sd A., & stipulons thrin contd for the erection of bldgs & executg works on the sd pces of land & orwise as thrin mentd:" AND WHAS the sd A. has Commencement of buildings.
commenced the erection of bldgs & other works on the sd lands, psuant to the sd agrmt. AND WHAS the sd A. has Agreement for sale.
agrd with the sd B. for the absolute sale to him for the sum of £—— of the benefit of the sd agrmt, togr with the

PREC. LIII. materials & plant hby assnd (*a*): NOW THIS INDRE WITNETH that in psuance, &c., *conson* (the rect, &c.), the sd A., as benefl owner, doth hby assn & transfer unto the sd B. ALL THAT the hinbfe recited agrmt of, &c., & all benefit thof; AND also all materials & plant belonging to the sd A., &c., & now being on the land comprd in the sd agrmt & used or intd to be used for the pposes of the bldgs & works thrin mentd, TO HOLD the same UNTO the sd B., his exs, ads, & assns absolutely: *Apptmt by A. of B.*, "his exs, ads, & assns," *the atty & attornies of A.*, p. 200, "to give any notices under the sd agrmt," *to give rects*, p. 202, *form* v., *for moys*, "wch shl become payable to the sd A., under the sd agrmt"; AND ALSO to exte & do all such deeds, instrumts, & acts as shl be or appear necy or pper to enable the sd B., his exs, ads, & assns, to carry out & obtain the full benefit of the sd agrmt, & of the lease or leases to be grted psuant thto as effectually as the sd A., his exs or ads, could have done, & genlly to act in the premes as to him or them shl seem pper: *Covt. by B. with A.*, that he, the sd B., his exs, ads, & assns, will pform & observe the agrmts on the pt of the sd A. contd in the sd agrmt of, &c., *continue covts for indemnity of A.*, p. 461, *mutatis mutandis*. IN WITS, &c. (*b*).

Witnesseth.

Assignment of agreement.

Plant, &c.

Power of attorney.

Covenant by purchaser to indemnify vendor.

(*a*) If the license of the freeholder is required to the assignment the variations in the recitals will be similar to those in the assignment of a lease, p. 478, note.

(*b*) Notice of this assignment to be given to K.

LIV.

CONVEYANCE *of* FREEHOLDS *to* PARTNERS *on a* SALE *by* AUCTION *by order of the* CHANCERY DIVISION *in an administration action* (*c*). VARIATIONS *for a sale by* PRIVATE CONTRACT, *and where the* LEGAL ESTATE *is outstanding in an* INFANT. APPORTIONMENT *of* RENT *where the property is subject with other land to a lease at an entire rent.* APPORTIONMENT *also of* TITHE RENT CHARGE. PREC. LIV.

Parties, A., *pson havg legal este* [*or appted to convey*], 1; B. & C., *pchasers*, "carrying on business in co-ptnp togr as ——, under the firm of ——, at ——," 2. *Recite death & intestacy of X., seised of* "the —— & hds hby grted," *leavg A.* [*N., the infant*], *his hr-at-law, & grt of admon, or, recite the will of X. devisg the hds to A.* [*N.*] *in fee simple, & death of X. & probate*, p. 402: AND WHAS on the —— day of —— an action was instituted in the Chancery Divon of the High Ct of Justice, in wch K. was plt, & L., M., & the sd A. [N.] were defts, for the ppose of havg the este of the sd X administered under the diron of the sd Ct: AND WHAS by an order made by, *judge*, on the further conson of the sd action, it was amongst other things ordered that the real este of the sd intestate [testor] shd be sold, & that the pchase-moy shd be pd into Ct to the credit of the sd action, the acct of ——: [AND WHAS, in psuance of the sd order, *recite sale by auction to B. & C.*, p. 407, & the sd B. & C. thrupon pd the sum of £—— as a deposit, & in pt paymt of the pchase-moy to L., the pson appted by the sd judge to rece the same: AND WHAS the result of the sd sale was duly

Recitals. Action. Order for sale. Sale by auction. Result of sale certified.

(*c*) See R. S. C. 1883, Order 51, rules 1, 1A *et seq.* As to what is "a cause or matter relating to real estate" within the meaning of rule 1, see *Re Staines*, 33 Ch. D. 172. See on the subject of sales by the Court generally, Dart, V. & P., chapters 19 & 20; Daniell's Chancery Practice, 1071—1110.

PREC. LIV

Sale by private contract.

certified on the —— day of ——]; [*or*, AND WHAS, in psuance of the sd order, by an agrmt in writg, dated the —— day of ——, & expd to be made betn L., the pson havg the conduct of the sale of the sd real este of the one pt, & the sd B. & C. of the other pt, the sd L. agrd, subjt to the approval of the sd judge, for the sale of the hds hby grtd to the sd B. & C., subjt as hinafter mentd, for the sum of £——, whof the sum of £—— was pd by the sd B. & C. to the sd L. as a deposit upon the exon of the sd agrmt: AND

Confirmation by Court.

WHAS by an order made in the sd action on the —— day of —— by the sd judge, the sd condonal contract of the —— day of ——, was confirmed & ordered to be carried into

Payment into Court.

effect:] AND WHAS the sd L. pd the sum of £——, *the deposit*, on the —— day of ——, into Ct, to the credit of the sd action, the acct afsd: AND WHAS it was stipulated

Agreement for apportionment of rent.

upon the sd sale that the rent payable by the tenant of the sd premes under the lease hinafter mentd (wch comprises other hds), shd be apportioned in mner hinafter expd, & that the sd premes shd be subjt to such apportioned tithe

Direction for payment of balance into Court.

rent chge as is hinafter mentd: AND WHAS by a diron signed by the chief clerk & made in the sd action (*a*) on the —— day of —— it was directed that the sd B. & C. shd on or bfe the —— day of —— pay into Ct to the credit of the sd action, the acct, &c., the sum of £——, being the balce of the pchase-moy for the sd premes after deductg the sd sum of £—— pd as a deposit [togr with £—— for intt thron at the rate of —— p. c. p. a. from the —— day of —— to the —— day of ——, makg togr £——], & it was thby further ordered that on such paymt being made, all pper ptics shd join in & exte a pper convce of the sd premes to the sd B. & C., or as they shd direct (*b*): AND WHAS in

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Variation where legal estate is in infant.

(*a*) See R. S. C. 1883, Order 51, rule 3A, and Supreme Court Funds Rules, 1886, rule 5. Where the legal estate is in N., the infant, add "& in the mre of the Tree Act, 1850, & the Tree Extension Act, 1852."

(*b*) In the case mentioned in the preceding note, say, "Such convce to be settled by the judge, & the judge being of opinion that

psuance of the last recited order the sd B. & C., on the —— day of ——, pd the sd sum of £—— into Ct to the credit of the sd action, the acct afsd: AND WHAS the sd B. & C. are desirous that the sd hds shd be conveyed to them in mner hinafter appearg: (*c*) NOW THIS INDRE WITNETH that in obedice to the sd order, & for effectuatg the sd sale, & in conson of the sum of £——, *the whole pchase-moy & intt, if any*, so pd by the sd B. & C. as afsd, & of the premes, the sd A. **under the hinbfe recited order of,** &c. (*d*) doth hby grt unto the sd B. & C., *pcels*, p. 415: *Habendum subjt to lease, with apportionmt of rent & of tithe rent chge*, p. 433, *to B. & C. as ptnp ppty*, p. 438. [*Acknowemt & undertakg as to munimts*, p. 459.] IN WITS, &c. PREC. LIV. Payment into Court.

LV.

CONVEYANCE *of a* PLOT *of* BUILDING LAND *with* EASEMENTS *to two* PERSONS *as* JOINT TENANTS. RESTRICTIVE COVENANTS *by the purchasers as to* BUILDING *and* USER *of the land.* VARIATIONS *where there are* MUTUAL COVENANTS *by the* VENDOR *and* PREC. LV.

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the sd N. was seised of or entled to the sd hds & premes upon trust within the meang of the sd acts or one of them, & it appearg that the sd N. was an infant, the sd judge appted the sd A. to convey the sd premes to the sd B. & C., or as they shd direct for the este thrin of the sd N."

As to the case where the legal estate is in a tenant in tail, see 2 Dav. Prec., pt. 2, 490, note. The clause in the Trustee Extension Act, s. 1, as to appointing a person to convey, is not confined to persons under disability, *Beckett* v. *Sutton*, 19 Ch. D. 646.

(*c*) In the case mentioned in note (*a*), say, "AND WHAS these psnts have been settled & approved as a pper convce psuant to the sd order as appears by the signature of the chief clerk of the sd judge in the margin hrof." Variation where legal estate is in infant.

(*d*) See p. 439, note. In sales by trustees under the Court the persons beneficially interested cannot be required to enter into covenants for title. See *Cottrell* v. *Cottrell*, 2 Eq. 330.

PREC. LV.

PURCHASERS, *and where the restrictive* STIPULATIONS *are comprised in* SCHEDULES (*a*).

Recitals. Contract. *PARTIES,* A., *vendor,* 1 ; B. & C., *pchasers,* 2. WHAS the sd A. has contracted with the sd B. & C. for the absolute sale to them as jt tenants of the hds hby assured (formg pt of an este laid out for bldg) & the inhance thof in fee simple subjt to the [reservons &] restrons hinafter contd for the sum of £—— : AND WHAS upon the agrmt for the sd sale it was stipulated that the same shd be subjt to the restrons & covts by the sd B. & C. hinafter contd for the proton & benefit of the sd A. his hrs & assns & the respive owners for the time being of the other pts of the este (coloured —— on the plan hto annexed) (*b*) of wch the pce of land intd to be hby assured forms pt [& that the sd A. shd also enter into the restrictive covts hinafter contd] ; [*or, Recital as to form of convce,* p. 411, *form* xxii.] ; NOW THIS INDRE WITNETH that in psuance, &c., *conson,* (the rect, &c.,) & also in conson of the covts hinafter contd on the pt of the sd B. & C., the sd A. as beneft owner doth hby grt unto the sd B. & C., *pcels referring to plan,* p. 417, *with rt to use of roads & drains,* p. 422 (*c*) ; [*Reservons of easemts, &c., to vendor,* p. 425 *et seq.*] ; TO HOLD the same premes UNTO & to the use of the sd B. & C., their hrs & assns, [SUBJT to the obligon of contributg & paying a due proportion [accdg to the extent of their frontage towards the sd respive roads, or intd roads] of the expse of makg, maintaing, repairg & cleansg the sd roads, sewers & drains, until the same shl be adopted by & taken into the chge of the local authority,

Agreement as to restrictive covenants.

Witnesseth.

Grant.

Habendum, subject to contribution for maintaining roads, &c.

(*a*) See p. 311, note, as to restrictive covenants, and the forms at pp. 314 *et seq.*

(*b*) See *Renals* v. *Cowlishaw,* 9 Ch. 125, 11 Ch. D. 866.

(*c*) The following if so intended, may be added here, as to which see p. 313, note ; and p. 423, form xxxv., and note :

Benefit of covenants of other purchasers.

" Togr with all such benefit of & rt of enforcg any covts entd into by any past or future pchasers of any other plots of land formg pt of the —— este, situate, &c., restrictive of the rt of bldg on or user of such respive plots as the sd A. may be able to convey or confer."

such proportion in case of dispute to be decided by the surveyor for the time being of the sd A., his hrs & assns, & subjt to the restrons & condons hinafter [in the schdle hto] contd & imposed on the sd B. & C., their hrs & assns, as obligons intd to be bindg in perpetuity on the hds hby assured, & all future owners thof as far as the law will permit (*d*) : *Restrictive covts by B. & C. with A. as to bldg,* PREC. LV.

(*d*) The following may, if so intended, be added here with reference to the cases of *Keates* v. *Lyon*, 4 Ch. 218, and *Renals* v. *Cowlishaw*, 9 Ch. D. 125, 11 Ch. D. 866, and the other cases referred to, p. 313, note :— Restrictive covenants to be enforceable by other purchasers.

"And to the intent also that the sd restrons & condons shl (as far as the law will permit) enure for the benefit of & be enforceable by any pson for the time being claimg title to or intted in any hds now or lately formg pt of the —— este, situate, &c., under any convce by way of sale made by the sd A. since the —— day of —— or hrafter to be made by him or his succors in title who may be aggrieved or whose ppty may be injured by the breach or neglect of any of the sd restrons or condons."

The following is another form of clauses as to roads and sewers where the conveyance includes a moiety of the roadways :—

Clauses as to roads and sewers. Another form.

"*Convce of plots numbered by refernce to plan*, includg a moiety of all streets or roads adjoing the sd respive plots of land so far as the same are co-extensive thwith, TOGR with rts of foot, horse & carriage road at all times & for all pposes in common with the vendor, his hrs, gtees, & assns, over & along all streets & roads formed, made, & opened to communicate through, in, or upon any pt of the estes now or late of the vendor whof the sd plots of ground hby gted form pt, when & so often as the same streets & roads are or shl be resply formed, made & opened for use, but not further or orwise. AND TOGR also with the free use (in common as afsd) of the drains or sewers made or intd to be made under the sd streets & roads resply, with power to open into and make communicons with the same resply, makg good all damage done thby & restorg the surface of the sd streets & roads as soon as may be, RESERVG nevless to the vendor, his hrs, gtees, & assns, & his & their tenants, the like free & un-

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&c., p. 466 (*a*), *referrg, if need be, to a plan, & the stipulons, if convenient, being contd in a schdle:* [*Similar restrictive covts by A. with B. & C., mutatis mutandis*]: *Covt* [*or mutual covts*] *to give notice of covts*, p. 467 (*b*): [*Provo for*

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restricted rts of way and passage at all times & for all pposes (in common as afsd) over & along all the streets & roads afsd, And also the like use (in common as afsd) of the sd drains & sewers, with liberty to enter upon the sd streets or roads for the ppose of opening into or makg communicons with such drains or sewers, makg good all damage done thby & restorg the surface as soon as may be, *Habendum to pchaser*, to the intent nevless that so much & such pt or pts resply of the sd plots of ground resply hby conveyed as are in the sd plan shown to be pts of streets or roads or intd streets or roads may resply for ever hrafter remain open & unbuilt upon & be added to & become pts of such streets or roads resply. *Covt by pchaser with vendor*, to leave open & unbuilt upon so much & such pt or pts of the sd plots hby conveyed as are delineated & descd in the sd plan as portions of streets or roads & are intd to be set apart for such ppose, AND WILL when thrunto required by the Local Board at his or their own expse pave, flag, make & form with pper materials & in a workmanlike mner the sd portions of such streets & roads resply so as to be fit for carriages, carts, & wagons, with pper causeways where necy [AND WILL make any alterons in the levels or gradients of the afsd portions of the sd streets or roads wch may be so required], AND ALSO will when required as afsd make & construct a sewer or drain under each of such portions of the sd streets or roads in accordce with such requiremts, AND WILL at all times cleanse, repair, & maintain the sd portions of the sd streets or roads & the sewers thrunder until the same shl be adopted by the local authority."

(*a*) See also CONDITIONS OF SALE, p. 314; as to the wording of the covenant, see *Re Fawcett*, 42 Ch. D. 150.

(*b*) It would be desirable that a memorandum of the deed should be endorsed on one or more of the covenantor's title-deeds to ensure that

re-entry by A. on breach of covts, p. 467]: [*Acknowemt & undertakg by A. as to munimts*, p. 459]. In wits. PREC. LV.

[*Schdle or Schdles of restrictive stipulons.*]

LVI.

DEED *of* Covenant *between* Vendors *and* Purchasers *of land laid out in* Building Plots (*c*). PREC. LVI.

THIS INDRE made the —— day of ——, betn the sevl psons who have signed their names & affixed their seals to these psnts (other than the pties hto of the second pt) hinafter called the pchasers of the one pt, & A. of, &c., & B. of, &c., hinafter called the vendors of the other pt: Parties.

Wuas the este wch is delineated on the plan hrupon endorsed, & wch is situated at —— in the parish of —— in the coy of ——, was by an indre, &c., assured to the use of the vendors, their hrs & assns; Recitals. Convey-ance to vendors.

And whas the vendors have appropriated or laid out as bldg sites divers pts of the sd este wch are hinafter designated as "The Lots," & are distinguished on the sd plan by the numbers from 1 to —— inclusive, & by the colours pink & blue, & have appropriated or laid out as roads other pts of the sd este distinguished on the sd plan by the colours yellow & brown & their distinctive names & have dedicated to the public the roads coloured yellow on the sd plan, & intend to dedicate to the public the roads coloured brown on the sd plan as soon as the pper local authority shl be willg to adopt the same: Estate laid out.

And whas each of the pchasers has recently pchased from the vendors one or more lots, & the vendors have made or Purchase of lots.

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purchasers from him shall have notice of the covenants. See *ante*, p. 312, note.

(*c*) Notice of this deed should be endorsed on the conveyance to A. and B., and also on the conveyance of each lot. See *ante*, p. 312, note.

As to laying out part of a settled estate for building purposes, see Settled Land Act, 1882, s. 16.

PREC. LVI.

How each purchaser's lot is distinguished in schedule.

The sales made subject to stipulations.

are about to make pper convces of the same to the respive pchasers thof in fee simple; AND WHAS the parlar lot or lots so pchased as afsd by each of the sd pchasers will appear by reference to the no. or nos. entd opposite to his name in the first schdle hto, all the nos. so entd correspondg with those by wch the lots are distinguished as afsd in the plan; AND WHAS, upon the contracts for the sd sevl pchases hinbfe refd to being entd into, it was agrd that each of the sd pchasers, his hrs & assns, shd observe & pform such of the stipulons contd in the second schdle hto, as are applicable to the lot or lots pchased by him as afsd, [& that the vendors, their hrs & assns, shd observe, &c., *as above*, *sayg*, "the unsold lots"] [& the roads coloured brown on the sd plan], & that for effectuatg such agrmt these psnts shd be made & exted:

Witnesseth.

Covenants by purchasers with each other and the vendor to perform stipulations in schedule.

NOW THIS INDRE WITNETH that in conson of the premes each of the pchasers doth hby for himself, his hrs, exs, ads & assns, covt with every two & more & each one of the other pchasers & their & his respive hrs & assns, & also separately with the vendors, their hrs & assns (*a*), THAT he, the sd covtor, his hrs & assns, & all psons derivg title through, under, or in trust for him or them resply, as lessees, mtgees, or orwise howsr, shl & will at all times for ever hrafter observe & pform such of the stipulons contd in the schdle hto as are applicable to the lot or lots pchased by him; AND the vendors hby for themselves & their hrs, exs, ads & assns jtly covt with each of the pchasers, his hrs & assns, that the vendors, their hrs & assns, will, &c., *as above*, *sayg*, "the unsold lots [& the roads coloured brown on the sd plan]; " AND IT IS HBY mutually agrd & decld betn & by the sevl psons pties hto that, in the constron & for the pposes of these psnts & of the sd schdle hrunder written, the follg terms or expressions shl have or bear the sevl meangs next mentd, that is to say, "the vendors" shl mean & include the sd A. & B., & their assns & the survor of them, his hrs

Covenant by vendors to perform stipulations.

Definition of terms in schedule.

(*a*) In framing a deed of this nature the cases of *Renals* v. *Cowlishaw*, 11 Ch. D. 866, and *Everett* v. *Remington*, [1892] 3 Ch. 148, must be borne in mind; see p. 313, note.

& assns; "the surveyor" shl mean & include the surveyor for the time being of or employed by "the vendors"; "license" shl mean a license in writg by & under the hands of "the vendors" or their duly authorised agent; "the plan" shl mean the sd plan hrupon endorsed; "the lots" shl mean the portion of the sd este appropriated or laid out as afsd for bldg pposes; the "unsold lots" shl mean the lots not sold to the respive pchasers; & "a lot," or "the lot," shl mean one of the "lots"; & "the private roads" shl mean the roads coloured brown on the plan; "the public roads" shl mean the roads coloured yellow on the plan; a "private road" or a "public road" shl mean one of the "private roads" or "public roads" resply; & "owner" with reference to any lot or lots, shl mean & include the pson to whom the same lot or lots has or have been or is or are about to be conveyed as afsd, & his hrs & assns: PREC. LVI.

Provd always & it is hby agrd that the vendors or the owner of any lot may at any time enforce the observce or pformce of any of the sd stipulons by any action or pcdg agst any other or others of them witht makg any pson a deft thto other than the pson committg or sufferg the breach of such stipulons wch is complained of in such action or pcdg & that these psnts may be reced as a conclusive answer to any objon for want of pties in that respt in any such action or pcdg: Proviso that any one person may sue any other.

In wits whof the sevl psons pties hto of the first pt, have attached & affixed their respive signatures & seals to these psnts, on the days mentd bfe & agst their signatures resply, & the sd A. & B. have hrunto attached & affixed their respive signatures & seals the day & yr first above written. Testimonium.

The first schdle refd to by the foregoing indre.

No. of lot.	Purchaser's Name.	Date of Execution by Purchaser.	Purchaser's Signature and Seal.	Witness.

The second schdle refd to by the foregoing indre.

[*Restrictive stipulons, see* p. 314, *et seq.*]

LVII.

PREC. LVII.

CONVEYANCE *in* FEE *for* BUILDING *purposes, in consideration of a perpetual* RENT-CHARGE (*a*), *with the* BENEFIT *of* COVENANTS *and a* POWER OF DISTRESS *over* ADJOINING LAND, *existing as an* INDEMNITY *against a prior overriding* RENT-CHARGE. VARIATIONS *where the* PRIOR *Rent-charge is to be borne by the* PURCHASER. PROVISIONS *as to* REDEMPTION *of rent-charge* (*b*).

Recitals.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2; *Recite convce to A.*, "of the hds hby grted togr with other hds" *subjt to a perpetual rent-chge of* £40 *& to certn covts; Conveyce by A. to X., of pt of the land subjt to the rent-chge & chging the whole rent-chge on that pt in exoneron of the land retained by A. & contg covts by X. & a power of distress, & other provons for indemnifying A. & the land retained;* AND WHAS

Contract.

the sd A. has agrd with the sd B. for the sale to him of the hds hby grted in conson of the yrly rent-chge of £30 hinafter limd & the covts by the sd B. hinafter contd;

Witnesseth.

NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the yrly rent-chge hinafter limd to the sd A., & of the covts by the sd B. hinafter contd, the sd A., as

Grant.

benefl owner doth hby grt unto the sd B., *pcels*, p. 415:

Together with benefit of covenants.

TOGR WITH the full benefit of all the covts by the sd X. & powers & remedies in the sd indre of, &c., contd or orwise existg for securg the paymt by the sd X., his hrs & assns, & indemnifying the sd A., his hrs & assns, & the hds hby

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(*a*) As to sales in consideration of a rent-charge and the power of re-entry see p. 334, note.

(*b*) As to the stamp on a conveyance in consideration of a rent-charge, see the Stamp Act, 1891, s. 56 (2). This deed does not require registration under 18 & 19 Vict. c. 15, s. 12, and is not affected by the Lands Charges Registration and Searches Act, 1888, which relates to land charges created otherwise than by deed only; see s. 4.

grted agst the paymt of the sd yrly rent-chge of £40 by the same indre chged exclusively on the hds thby assured to the sd X., To HOLD the same UNTO the sd B., & his hrs, To THE USE that the sd A., his hrs & assns, shl rece a perpetual yrly rent-chge of £30 to commce from the date of these psnts & to be chged upon & issuing out of all the premes hby grted & to be pd witht any dedon (*c*) by eql half-yrly paymts on the —— day of ——, & the —— day of —— in every yr, the first paymt thof to be made on the —— day of —— next (*d*), AND SUBJT & chged as afsd, To

PREC. LVII.

Habendum.

Limitation of rent-charge.

(*c*) As to these words, see p. 334, note (*c*).

(*d*) The Conv. Act, 1881, s. 44, gives to the owner of any annual sum charged on land or the income of land, not being rent incident to a reversion, the following remedies for recovering the same and the costs arising from non-payment, *so far as they might have been conferred by the instrument creating the charge*, but subject to the interests having priority over the charge, namely, if the charge is in arrear for twenty-one days, a power of distress, if the charge is in arrear for forty days a power to enter and take the rents and profits, and also whether he enters and takes possession or not, a power to limit a term of years to a trustee upon trusts for raising the charge and costs; and that enactment is by the Settled Land Act, 1890, s. 9, extended to a grant by a tenant for life under the Settled Land Acts for building purposes, reserving a perpetual rent. Powers of distress and re-entry may, therefore, be omitted; the following are the usual forms of such powers which would, if inserted, come in at this point; it is conceived that the power of distress is not affected by the Bills of Sale Acts, see p. 335, note:—

Statutory remedies for rent-charge.

"AND TO THE FURTHER USE, that if any pt of the sd rent-chge hby limd shl at any time be unpd for twenty-one days after any of the days hinbfe appted for the paymt thof, then & so often it shl be lful for the sd A., his hrs & assns, to enter into & distrain upon the sd premes hby grted or any pt thof, to the intent that thby or orwise the sd rent-chge, & every pt thof so unpd, & all costs & expses occased by the non-paymt thof, may be pd & satisfied, AND TO THE FURTHER USE, that if any pt of the sd rent-chge shl at any time be unpd for forty days after any of the days hinbfe apptd for the paymt thof, then & so often, although there shl not have been any legal demand made thof, it shl be lful for the sd A., his hrs & assns, to enter into & upon, & to hold the same

Power of distress.

Power of entry.

PREC. LVII.

Covenant to pay rent-charge.

THE USE of the sd B., his hrs & assns for ever; AND THE sd B. doth hby covt with the sd A., his hrs & assns, that he the sd B., his hrs & assns, will henceforth pay to the sd A., his hrs & assns, the sd yrly rent-chge of £30 at the times & in the mner hinbfe appted for the paymt thof, free from all dedons (*a*): AND FURTHER, &c., *for erectg & maintaing bldgs, &c., & restrictive covts,* see p. 466: And will permit the sd A., his hrs & assns & his or their agents, once in every yr in the daytime, on givg to the tenant or occupier for the time being of any dwellg-house or bldg upon the sd premes hby grted, —— days prevs notice in writg to enter into & upon the same to view the state of repair & condon thof: *Power of re-entry,* p. 467 (*b*): [PROVD ALWAYS & it is hby agrd & decld that if the sd B., his hrs or assns, shl at any time within the sd period of lives in being & twenty-one yrs thrafter (*c*), give six calr months' notice in writg expirg within the last-mentd period to the sd A., his hrs or assns, of his or their desire of pchasg the sd rent-chge, the sd A., his hrs & assns, shl after the expiron of the sd notice on paymt by the sd B., his hrs or assns, of such rent-chge up to the day of pchasg the same, & of the sum of £——, convey & rele the same rent-chge to the sd B., his hrs & assns, or as he or they shl direct; PROVD also that if the sd

Power to purchaser to redeem rent-charge.

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premes or any pt thof, & to take the rents & profits thof, until he or they shl thby or orwise be pd the sd rent-chge, & the arrears thof due at the time of entry or aftwds to become due during such posson, togr with all costs occasd by the non-paymt thof, such posson, when taken, to be witht impeachmt of waste."

Sale subject to prior rent-charge.

(*a*) If the land is sold subject to the prior rent-charge instead of being exonerated from it, the recital of the contract for sale and the habendum will be, "subjt to the sd rent-chge of £—— reserved by the hinbfe recited indre of, &c.," and a covenant by the purchaser to pay and keep the vendor indemnified against the rent-charge of £40 will be added. See p. 464, form VII.

(*b*) Compare the form in Precedent LVIII., *infra,* p. 605.

(*c*) This refers to the restriction of the power of re-entry to lives in being, &c.; see as to this, p. 335, note.

A., his hrs & assns, shl within, &c., as above, give six calr months' notice in writg, expirg as afsd, to the sd B., his hrs or assns, of his or their desire of requirg the redmon of the sd rent-chge by the sd B., his hrs or assns, then the sd B., his hrs or assns, shl upon the expiron of the sd notice redeem the same for the sum of £—— wch shl be thrupon pd by him or them to the sd A., his hrs or assns, togr with the sd rent-chge up to the day of redmon & upon such paymt being made the sd A., his hrs or assns, shl convey & rele the sd rent-chge to the sd B., his hrs or assns, or as he or they shl direct] (*d*). In wits, &c. PREC. LVII. Power to vendor to compel redemption.

LVIII.

CONVEYANCE *of land for* BUILDING *purposes by* TENANT *for* LIFE *of one undivided* MOIETY *under the* SETTLED LAND ACT, 1882, *and by the owner in* FEE *of the other* MOIETY *in consideration of* TWO FEE FARM RENTS; *with* COVENANTS *and power of* RETENTION *as* INDEMNITY *against an* OVERRIDING *rent-charge* (*e*). PREC. LVIII.

Parties, A., *tenant for life of moiety*, 1; B., *owner of moiety*, 2; C., *pchaser*, 3. Whas the hds hby assured are Recitals.

(*d*) The clause in the Conv. Act, 1881, s. 45, enabling the owner of land subject to a perpetual rent-charge or other annual sum to redeem it with the aid of the Land Commissioners (now the Board of Agriculture), does not apply to a rent reserved on a sale, see sub-s. 5.

(*e*) See the last Precedent and notes, and the Settled Land Act, 1882, s. 10; and as to the application of the Act to land held in undivided shares, see p. 504, note.

A doubt has been sometimes felt whether a rent-charge can be limited on its original creation direct to the uses of a settlement; and to avoid question it has been sometimes limited to a person in fee to be regranted by him by a separate (or the same) deed to the intended uses: See Fearne, C. R. p. 528, note by Butler; and Butl. n. Co. Litt. 271 b., VII. 371; the ground of the doubt being whether each successive limitation might not As to limiting a rent-charge to the uses of a settlement.

PREC. LVIII.

Overriding rent.

Title of grantors.

Agreement for sale.

subjt to a perpetual rent-chge of £—— p.a., created by an indre, &c., & to covts & provons for securg the paymt thof: AND WHAS the sd A. is tenant for life in posson of one undivided moiety of the sd hds under an indre of settlemt, &c., & the sd B. is seised in fee simple in posson of the remaing undivided moiety thof: *Recite order of Ct, or clause in settlemt, authorisg sale by A. at fee farm rents:* AND WHAS the sd A. as to one undivided moiety of the hds hby assured by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, & orwise as afsd, & the sd B. as to the other undivided moiety thof, have resply agrd with the sd C. for the absolute sale to him of the sd hds & the inhance thof in fee simple in posson in conson of the two sevl perpetual yrly rent-chges of £—— & £—— resply hinafter limd, & of the covts on the pt of the sd C.

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be held to be of a distinct rent, so as to invalidate the ulterior limitations after the first estate tail for remoteness; but there seems no valid reason why one and the same rent should not be reserved direct by way of use for successive estates amounting together to the fee; see 2 Byth. & J. Conv. 3rd ed. p. 8; and it is believed to be the usual practice so to reserve it.

By the Settled Land Act, 1890, s. 9, where a perpetual rent-charge is reserved on a grant for building purposes by a tenant for life, this reservation is to operate to create a rent-charge in fee issuing out of the land conveyed with the remedies for recovery thereof conferred by the Conv. Act, 1881, s. 44; and the rent-charge is to go to the uses of the settlement; this enactment, in the cases to which it applies, precludes the doubt above referred to.

The form of limitation in a conveyance under the Settled Land Act (as in the text) is simpler than in a conveyance by revocation and appointment of the use under the ordinary express power of sale; since in the former case, the conveyance of the tenant for life passes the seisin to the grantee out of which the uses are served, whereas in the latter case, they have to be served out of the seisin of the original grantee under the settlement; but the above Precedent may be adapted without difficulty to that case.

There seems no objection to charging both rents on the entirety of the land, although one of the grantors is a limited owner. No attempt is made to reserve a power of re-entry in this case, as there are two rents, and it would be difficult to frame. The indemnity against the overriding rent ought, perhaps, to be severed so as to confine the remedy against each vendor to his proportion.

hinafter contd: NOW THIS INDRE WITNETH that in psuance of the sd agrmt & for the consons afsd the sd A. as benefl owner as to the undivided moiety of the sd hds of wch he is tenant for life as afsd by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, & the hinbfe recited order of Ct, *or*, "the sd settlemt," & of every or any other power enablg him in this behalf, doth hby grt & convey, & the sd B., as benefl owner, as to the remaing undivided moiety of the sd hds, doth hby grt & convey unto the sd C., *Pcels*, To hold the same unto the sd C. & his hrs freed & dischged from the sd overridg yrly rent-chge of £——, To the use that there shl issue out of the entirety of all the sd hds & premes hby grted two perpetual yrly rents of £—— each, & that one of such rents shl remain & be to such uses upon such trusts & subjt to such chges, powers & provons as the sd first-mentd moiety of the sd hds & premes hby grted wd have stood limd & subjt to by virtue of the sd indre of settlemt if these psnts had not been made & exted, & that the other of such rents shl remain & be to the use of the sd B., his hrs & assns, the sd two sevl rents to rank *pari passu* & witht any priority of chge as betn themselves, & to commce from the date of these psnts, & to be pd to the pson or psons entled thto resply under the limons hinbfe contd by eql half-yrly paymts witht any dedon on the —— day of —— & the —— day of —— in every yr, AND subjt to & chged with the sd respive rents & all statutory & other powers & remedies for recoverg & compellg paymt of the same, To the use of the sd C., his hrs & assns, for ever: *Provo limitg liability of tenant for life under implied covts for title*, p. 452: AND the sd C. doth hby covt with the sd A., his succors in title & assns, that he the sd C., his hrs & assns, will henceforth pay to the sd A., his succors & assns, the yrly rent-chge of £—— first hby limd, & with the sd B., his hrs & assns, that he the sd C., his hrs & assns will henceforth pay to the sd B., his hrs & assns, the yrly rent-chge of £—— secondly hby limd at the times & in the mner hinbfe appted

PREC. LVIII.

Witnesseth. Grant.

Habendum.

Reservation of rents.

Covenant by purchaser to pay rents, &c.

PREC. LVIII.

for the paymt of the sd rent-chges resply free from all dedons: *Covts by C.*, "with the sd A., his succors in title & assns, & also as a separate covt with the sd B., his hrs & assns, that, &c." *as to bldg, &c.:* AND the sd A. & B. do hby & as a separate covt each of them doth hby covt with the sd C., his hrs & assns, that the sd A. & his succors in title, & the sd B., his hrs & assns, will duly pay the sd overridg rent-chge of £——, & pform & observe the covts & provons for securg the same contd in the sd indre of, &c., & will at all times keep indemnified the sd C., his hrs, exs, ads, & assns, agst the sd rent-chge, covts, & provons: AND further, that if default shl at any time be made in paymt of the last-mentd rent-chge or any pt thof, or in the pformce & observce of the sd covts & provons or any of them, & the sd C., his hrs, exs, ads or assns, or his or their tenants, shl be called upon to & shl pay the same rent or any pt thof, or shl be put to any costs, damages, or expses in consequce of any such default as afsd, then & in every such case it shl be lful for the sd C., his hrs & assns, to retain the sd respive rents of £—— each hby limd or eir of them or any pt thof resply: AND also to enter into (*a*) & distrain upon so much of the land upon wch the sd rent of £—— is chged as is not hby assured, & to enter into & upon & to hold the same premes or any pt thof, & to take the rents & profits thof witht impeachmt of waste until he or they shl have been fully reimbursed the amt so pd, & all such costs, damages, or expses as afsd. IN WITS, &c.

Covenant of indemnity by vendors against overriding rent.

Power of retention and distress and entry.

As to powers of distress and entry.

(*a*) There may be some doubt whether these powers of distress and entry can be given by a tenant for life proceeding under the Settled Land Acts; in addition to the doubt as to whether such powers can be conferred in perpetuity (see *Dunn* v. *Flood*, 25 Ch. D. 629, above, p. 335, note), and the further doubt (adverted to in the same note), whether the power of distress may not be affected by the Bills of Sale Acts. The powers of entry and distress might be restricted as to time by adding the clause at p. 582, note, mutatis mutandis.

LIX.

CONVEYANCE *of* FREEHOLD LAND *by* MORTGAGOR *and* MORTGAGEE *in consideration of a* RENT-CHARGE, *which is substituted as security* (*b*). PREC. LIX.

A., *mtgor* (hinafter called the vendor), 1; B. & C. *mtgees* (hinafter called the mtgees), 2; D., *pchaser* (hinafter called the pchaser), 3. *Recite mtge*, p. 387; *State of mtge debt*, p. 410; *Agrmt for sale*, p. 602: AND WHAS it has been agrd that the sd premes shl be assured in mnr hinafter expd, & that such provons shl be made for substitutg the sd rent-chge for the sd premes hby assured as a secy to the mtgees for the moys secd by the sd indre of mtge as are hinafter contd: NOW THIS INDRE WITNETH, that in conson of the yrly rent of £——, hinafter limd, & of the covts & provons hinafter contd, & on the pt of the pchaser, his hrs & assns, to be pformed & observed, the mtgees **as mtgees** at the reqt of the vendor, do & each of them doth hby grt & rele, & the vendor **as benefl owner** doth hby grt & confirm unto the pchser & his hrs, *pcels*, p. 415; *Habendum* UNTO the pchaser & his hrs *free from mtge*, p. 434, TO THE USE that the mtgees, their hrs & assns, shl for ever hrafter rece, &c., *Reservon of rent-chge in fee*, p. 603, & subjt thto TO THE USE of the pchaser, his hrs & assns; *Covt by pchaser*, "with the mtgees, their hrs & assns, & also as a separate covt with the vendor, his hrs & assns," *for paymt of rent-chge*, p. 604, *& as to buildg, &c., see* p. 466; *Proviso*, that if durg the lifetime of the sevl pties hto, & twenty-one yrs after the death of the last survor of them, or within any further period of time within wch this psnt power or condon

Recitals.

Agreement for substitution of rent-charge.

Witnesseth.

Grant.

Habendum.

Power for mortgagees to enter (*c*).

(*b*) This saves the expense of a new mortgage of the rent-charge; but the *ad valorem* stamp duty will, as it seems, be the same, namely, the conveyance duty and 6*d.* per cent. on the mortgage debt in respect of the substituted security; see the Stamp Act, 1891, schedule, MORTGAGE; 26 Sol. J. p. 403.

(*c*) See p. 335, note, and the form at p. 467.

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may lfully be given or created, the sd rent-chge of £—— shl be in arrear for twelve calr months, the mtgees, their hrs or assns, may, at any time thrafter within the period of time afsd & notwg any actual or constructive waiver of any prevs cause or rt of re-entry, enter upon the sd premes hby assured or any pt thof in the name of the whole, & thrupon the same premes shl remain to the use of & be vested in the mtgees, their hrs & assns, in all respts as if these psnts had not been made or exted : *Acknowemt by mtgees to pchaser as to munimts retained*, p. 459 : AND IT IS HBY DECLD betn the vendor & the mtgees, that the sd rent-chge of £—— hinbfe limd to the mtgees is so limd to the intent that the same shl be substituted for the sd premes hby assured as a secy to the mtgees, their exs, ads, & assns, for the ppal moys & intt secd by the sd indre of mtge, & shl be subjt to the like equity of redmon & the like power of sale, & other powers & provons for securg the paymt of the sd ppal moys & intt, as such premes were subjt to immedly bfe the exon of these psnts, with such modificons as the case may require : AND IT IS HBY FURTHER AGRD, that until notice to the contrary from the mtgees, their exs, ads, or assns, to the pchaser, his hrs or assns, the rect of the vendor, his hrs & assns, for the sd rent-chge hby limd, shl be a sufft dischge to the pson or psons paying the same. IN WITS, &c. (*a*).

Rent-charge substituted as security.

Receipt of vendor to be sufficient.

LX.

PREC. LX.

CONVEYANCE *of several* PERPETUAL RENT-CHARGES (SUBJECT *as to one to a* PRIOR RENT-CHARGE) *and of a* PLOT *of ground let on a* BUILDING LEASE. CONCISE FORM *without* RECITALS.

Witnesseth.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. WITNETH, &c., *conson*, "for the pchase, subjt as hinafter appears, of

(*a*) It would be desirable to endorse notice of this deed on the mortgage deed if retained by the mortgagee.

PREC. LX.

the fee-simple of the yrly rent-chges & plot of land hby grted," (the rect, &c.,) the sd A., **as benefl owner**, doth hby grt unto the sd B., ALL THOSE sevl perpetual yrly rent-chges, amtg togr to the sum of £——, of wch resply, & of the respive lands & ppty out of wch the same resply issue, the parlars are stated in the first pt of the schdle hto, & wch lands are resply delineated in the plan hrunto annexed, & are in such plan resply edged red, & each of wch is marked with the amt of the rent-chge to wch the same is subjt, AND ALL future paymts of the sd respive rent-chges, AND ALL powers & remedies for recovery of the sd rent-chges & the benefit of all covts, condons, & provons contd in the respive indres mentd in the first pt of the sd schdle hto, by wch the sd rent-chges were resply created (*b*): AND ALSO all that plot of freehd land, situate, &c., also delineated in the sd plan, & thrin edged blue, & wch is let on lease for the term of yrs, & at the yrly rent, the parlars whof are stated in the second pt of the sd schdle hto: TO HOLD all the premes, hby grted UNTO & TO THE USE of the sd B., his hrs & assns, SUBJT as to the rent-chge of £—— mentd in the schdle hto to the paymt

Conveyance of rent-charges.

And land.

Habendum.

Subject to overriding rent-charge.

(*b*) The following is a form of description of a single rent-charge in the parcels where there are no recitals :—

"ALL THAT perpetual yrly rent-chge of £——, issuing & payable out of ALL THAT pce of ground, &c., situate, &c., & contg, &c., & bounded, &c., & the messe, &c., thron erected, wch sd pce of ground, messe, & premes, were by an indre, &c., conveyed unto the sd X., his hrs & assns, reservg the sd perpetual yrly rent-chge of £—— thereout unto the sd Y., his hrs & assns, & wch rent-chge was made payable qtly, free from all dedons except the ppty-tax, on the four usual qtr-days, with powers, covts, & provons for securg the same, & wch sd rent-chge has by virtue of divers mesne assurces & acts in the law, & ultimately by an indre dated, &c., & made, &c., become & is now vested in the sd A. as absolute owner thof in fee simple, AND ALL future paymts of the sd rent-chge, TOGR WITH the full benefit of all powers, remedies & covts subsistg for securg & enforcg paymt of the sd rent-chge."

Description of rent-charge.

PREC. LX.

thereout henceforth of the yrly sum of £10, being a proportionate but unapportioned pt of a yrly rent-chge of £25, wch by an indre, &c., was made issuing & payable out of a plot of land includg the sd land out of wch the sd rent-chge of £—— issues, BUT WITH THE BENEFIT of all powers, remedies, & covts existg as an indemnity agst paymt of an undue proportion of the sd rent-chge of £25, or of any expses or damages on acct thof, AND SUBJT as to the sd plot of land hby grted to the residue now unexpired of the sd lease mentd in the second pt of the schdle hto: *Covt by B. to pay the yrly sum of* £10 *to* "the pson or psons for the time being entled to rece the same," *& to indemnify A. thfrom, see* p. 604, *note.* IN WITS, &c. (*a*).

And to building lease.

The SCHEDULE above refd to.

Part 1.

Amounts of Rent-charges.	Dates of Deeds by which the Rent-charges were created.	Contents and Situation of Lands out of which the Rent-charges issue.	To whom the Rent-charges were made Payable.	To whom the Lands were limited.	Days on which the Rent-charges were made Payable.

Part 2.

Parlars of plot of bldg land.

(*a*) Notice should be given to the persons by whom the rent-charges are payable.

LXI.

PREC. LXI.

CONVEYANCE *under the* LANDS CLAUSES CONSOLIDATION ACT, 1845 (8 & 9 Vic. c. 18) *of* FREEHOLDS *and* LEASEHOLDS *by a* TENANT FOR LIFE *to a* RAILWAY COMPANY *with the* CONCURRENCE *of a* TRUSTEE *in whom the legal Estate of the* LEASEHOLDS *is vested.* VARIATIONS *where the* PURCHASE-MONEY *being under* £200 *is* PAID *to* TRUSTEES *nominated under the* 71*st section* (*b*). ALSO *where the sale is in consideration of a* RENT-CHARGE.

(*b*) The sale and conveyance should, when possible, be made by the tenant for life under the Settled Land Acts (see p. 359, note, and Precedent XVIII., p. 513, and the notes thereto); but recourse to the powers of the L. C. C. Act, ss. 7, 9, may still occasionally be necessary; and where the sale is for a rent-charge the powers of the former Act would not be available, if the case is not within s. 10.

Variations for sale for a rent-charge.

If the sale is in consideration of a rent-charge (as to which see the L. C. C. Act, 1845, ss. 10, 11, and the Amendment Act of 1860, 23 & 24 Vict. c. 106, s. 2; *Eyton* v. *Denbigh, &c., Ry. Co.*, 6 Eq. 14, 488; 7 Eq. 439), the recital of the contract for purchase will be, "In conson of a yrly rent-chge of £—— payable half-yrly as hinafter mentd, the amt of wch rent-chge has been determined by two able practical surveyors, psuant to the provons of the statutes in that behalf, & wch rent-chge is to include compenson, &c., *as in the text;*" and the conveyance will be, "In conson of the rent-chge hinafter limd & of the covts by the Co hinafter contd & in exercise of all statutory or other powers enablg the vendor in this behalf:" *habendum* "UNTO & to the use of the Co & their assns for ever, they the Co or their assns yieldg & payg henceforth unto the vendor or his assns or other the pson or psons who but for the assurce hby made wd hrafter for the time being be entled to the rect of the rents & profits of the sd hereds hby assured one clear yrly rent-chge of £—— payable half-yrly on the —— day of —— & the —— day of —— free from all taxes & dedons, except ppty-tax, the first half-yrly paymt thof to be made on the —— day of —— next, & the sd rent-chge to be a first chge

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Parties, A., *tenant for life* (hinafter called the vendor), 1; B., *tree*, 2; [D. & E., *trees nominated under the* 71*st section*, 3]; The —— Rly Co incorpd by the —— Rly Act, 18— (hinafter called the Co), 3 [4]. *Recite lease*, p. 393, *comprisg*, "with other hds, the hds hby assned," *statg pcels shortly; Devolon of leasehds to K.*, p. 395; *Will of K., devisg* "the hds hby grted with other hds [by the description of, &c.]" *to the use of A. for life, & bequeathg the leasehds to B. & C. upon trusts correspondg with uses of freehds, & apptg B. & C. exs: Death, probate, & seisin of testor*, pp. 402 & 396: *Death of C.:* And whas the hds hby grted & assned resply are required by the Co for the pposes of their rly & undertakg authorised by the —— Act, 18—, & the subseqt special acts of parliamt relatg to the Co, or some of them, & the Co are under those acts & the genl acts incorpd thwith, or some of them, authorised to take & use the sd hds for the pposes afsd: And whas by virtue of the powers conferred on them resply by the sd acts, or some of them, the Co have agrd with the vendor for the pchase of the hds hby grted for an este in fee simple in posson, & the hds hby assned for the residue of the sd term of —— yrs grted by the sd indre of lease subjt to the annl rent of £——, being an apportioned pt of the sd rent of £——, reserved by the sd lease, & subjt to the covts by the lessee, & condons in the sd lease contd so far as they relate to the hds hby assned, at the price of £——, being the sum determined by two able practical surveyors nominated one by the vendor & one by the Co accdg to the provons of the Lands Clauses Consolidon Act, 1845, wch sum it was agrd shd include [the (*a*) value

Recitals.

That the lands are required for the railway.

Agreement for sale.

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on the tolls & rates authorised by or payable under the special Acts of the Co." Add a covenant by the Company, "that the Co will at all times hrafter duly pay the sd rent-chge hinbfe limd to the vendor or his assns or the pson or psons afsd at the times & in the mner at & in wch the same is hinbfe made payable witht any dedon except as afsd."

(*a*) The Company are not entitled to any mines of coal, ironstone, slate,

of all mines & minls under the hds hby grted, & also] compenson for severce of the sd hds hby grted & assned resply from other ppty of the vendor, or orwise injuriously affectg such other ppty in exercise of the powers given by the sd acts or any of them, [& for damage of every description, whether for removal, loss of trade (*b*), goodwill, inconvenice, or orwise, & shd also be in full satisfon for all accommodon & other works & things wch might orwise be required to be made or done under the sd acts or any of them for the benefit or accommodon of the adjoing ppty of the vendor, save & except the accommodon works & things specified in the schdle hto]: [AND WHAS it has been agrd that these psnts shl contain the covts hinafter expd]; AND WHAS the Co on the —— day of —— duly pd the sd sum of £—— into Ct, to an acct entled, &c. (*c*); NOW THIS INDRE WIT-

Payment by company of purchase-money into Court.

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or other minerals, unless the same are expressly purchased by them; see the references in p. 360, note (*a*); see also as to the vendor's rights of working, if the Company do not purchase the minerals, *Pountney* v. *Clayton*, 11 Q. B. D. 820. A tenant for life unimpeachable for waste is not entitled to any part of the compensation money paid by the company in respect of the minerals, whether the sale is made under the L. C. C. Act, or the ordinary express power of sale, or under the Settled Land Acts, *Re Robinson*, [1891] 3 Ch. 129, 134.

(*b*) Compensation for loss of trade is part of the consideration for the sale for the purpose of stamp duty: *Commissioners of Inland Revenue* v. *Glasgow, &c., Ry. Co.*, 12 App. Ca. 315.

(*c*) Where the purchase-money is under £200 and over £20, and the payment is to be made to trustees nominated under 8 & 9 Vict. c. 18, s. 71, say,

"AND WHAS the vendor is desirous of nominatg the sd D. & E. to be the trees to whom the sd pchase-moy shl be pd, & it has been agrd that such nominon shl be effected by these psnts; NOW THIS INDRE WITNETH that in psuance of the sd agrmt the vendor doth hby, with the approbon (hby testified) of the Co, nominate the sd D. & E. to be the trees to whom the sd pchase-moy of £—— shl be pd: AND THIS INDRE ALSO WITNETH that for effectuatg the sd sale, & in conson of the sum of £—— upon the exon of these psnts pd by the Co to the sd D. & E., the rect whof is hby acknowed, the vendor, &c."

Where the purchase-money is paid to trustees nominated for that purpose.

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Witnesseth.

Grant of freeholds.

NETH that in psuance of the sd agrmt, & in conson of the sum of £——, so pd by the Co as afsd (the paymt whof in mner afsd the vendor doth hby acknowe) the vendor, **as benefl owner**, by virtue of the powers or authorities vested in him by the sd acts, or some of them or orwise, doth hby grt & convey unto the Co (*a*) ALL THOSE pces or pcels of land, messes or tenemts & hds situate in the parish of —— & coy of ——, contg in the whole by admeasuremt ——, & bounded, &c., wch sd premes were late in the occupon of ——, & are now in the occupon of the Co, *reference to deposited plans, &c.*, p. 418, *form* XIII. [togr with, *or*, "except & reservg out of the assurce hby made," all mines & minls under the sd hds & premes]: *Habendum*, UNTO & TO THE USE of the Co & their assns: AND THIS INDRE, &c., that the sd B., **as tree**, by diron of the vendor doth hby assn, & the vendor **as benefl owner** by virtue, &c., *as above*, doth hby assn & confirm unto the Co, *leasehd pcels in the same form as the freehd pcels; Habendum*, to the Co & their assns for the residue now unexpired of the sd term of —— yrs grted by the sd lease, subjt to the paymt of the yrly rent of £——, being an apportioned pt of the rent of £—— reserved by the sd lease, & subjt to the covts by the lessee & condons contd in the sd lease, & henceforth to be pformed & observed, so far as they relate to the premes hby assned, & so far as such covts & condons may affect the sd premes in the hands of the Co & their assns; *Provo restrictg liability of tenant for life under implied covts for title*, p. 452; [*Covt by vendor to pay apportioned pt of rent & pform covts, &c., of lease in respt of ppty retained by him*, p. 461, *with the varions in the notes; Covt by Co to pay apportioned pt of rent, & pform covts, &c., of lease, so far as they relate to the premes assned*, "& may affect the sd premes in the hands of the Co & their assns," *& for indemnity of the vendor & the rest of the ppty comprd in the lease*, p. 461, *with the varions in the notes* (*b*)]: AND the Co do hby for

Witnesseth.

Assignment of leaseholds.

Habendum.

(*a*) The parcels are often put into a schedule.

(*b*) As it may be assumed that the company will purchase the reversion

themselves & their assns covt with the vendor & his assns, to the intent that this covt may enure for the benefit of all psons hrafter havg or claimg title to the adjoing lands & hds of the vendor that they the Co or their assns will within —— calr months from the date of these psnts exte do & make [accdg to plans & specificons wch have been already prepared & signed on behalf of the Co by K. their engineer, & wch have been approved of & signed by the vendor, *or*, "in a good & workmanlike mner, & with pper materials"] & for ever hrafter maintain in good repair & condon for the benefit of the vendor & his assns, or other the pson or psons havg or claimg title as afsd, the accommodon & other works specified in the second schdle hto. *Acknowemt & undertakg by vendor as to munimts*, p. 459. In wits, &c.

PREC. LXI.

Covenant by company to execute accommodation works.

[*Schdles of Pcels, Accommodon Works, if any, & of Munimts*].

LXII.

CONVEYANCE *of* Copyholds *under the* Lands Clauses Consolidation Act *by the* Guardian *of an* Infant *to a* School Board (*c*).

PREC. LXII.

Parties, A., *guardian*, 1; the School Board for ——, incorpd by virtue of the Elementary Educon Act, 1870

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of the leaseholds, unless held for very long terms, these mutual covenants may generally be omitted.

(*c*) See the Lands Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 18, s. 95, incorporated with the Elementary Education Act, 1870, 33 & 34 Vict. c. 75; see s. 20. As to the powers of a School Board under that Act, see *Rolls* v. *School Board for London*, 27 Ch. D. 639. As to the redemption of tithe, see Tithe Commutation Act (41 & 42 Vict. c. 42), s. 1. The conveyance must be entered on the Rolls of the Manor. As to enfranchisement, see the Copyhold Act, 1887, s. 1. As to the bar of the entail of copyholds by enfranchisement, see *Ex parte School Board for London*, 41

PREC. LXII. (hinafter called the Board), 2. *Recite title of K., the infant; Apptmt of A. as his gdian; Agrmt for pchase & sale as in last precedent, saying,* "for a customary este in fee in posson," *& omitty reference to mines & minls: Paymt of pchase-moy into Ct,* p. 514: NOW THIS INDRE WITNETH Witnesseth. that in psuance, &c., & in conson of the premes the sd A. doth hby, by virtue of the power or authority vested in him by the sd act or the acts incorpd thwith, convey unto the Board, *pcels,* p. 415: *Habendum,* UNTO the Board & their assns, nevs until the premes shl have been enfranchised subjt to the same fines, rents, heriots, suits & services as have htofore been payable & of rt accustomed in respt thof. *Covt by A. agst incumbces,* p. 446 (*a*). IN WITS, &c.

LXIII.

PREC. LXIII. GRANT *by* SEPARATE DEED *of* PERPETUAL RENT-CHARGE *on purchase of land by* RAILWAY COMPANY *to uses of* STRICT SETTLEMENT. PROVISION *for* INDEMNITY *of* COMPANY *against* LAND-TAX, *and* TITHE RENT-CHARGE.

Recitals, Sale for rent-charge. *PARTIES,* Co, 1; B., *tree,* 2. *Recite vendor's settlemt:* AND WHAS the sd B., as the survivg tree of the hinbfe recited indre of settlemt, & by virtue of the provons of the Lands Clauses Consolidon Act, 1845, & the Amendmt Act, 1860, has sold certn lands in the parish of ——, contg, &c., or thrabts, comprd in the sd settlemt to the sd Co in conson of a perpetual yrly rent of £—— wch has been settled & determined in mner required by the sd Acts, &

Ch. D. 547. The sale and conveyance might now generally, in the case of an infant, be effected under the Settled Land Acts; as to which see p. 511, note, and Precedent XXI., p. 521.

(*a*) The insertion of an express covenant is considered preferable to making A. convey "as trustee"; see p. 439, note.

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is to be grted by the sd Co accdg thto, AND it was also agrd that the sd Co shd grt a further perpetual yrly rent-chge of £—— so long as the lands so sold shd be exonerated as hinafter decld from all land tax & tithe rent-chge to become due in respt thof: AND WHAS by an indre bearg, or intd to bear even date with these psnts, & made betn the sd B. of the one pt & the sd Co of the other pt, the sd lands have, in conson of the grt hby made, been conveyed to the sd Co: NOW THIS INDRE WITNETH that in conson of the premes, the sd Co Do hby grt unto the sd B. & his hrs, as survivg tree of the sd recited indre of settlemt, one clear yrly rent-chge of £—— sterlg, to be payable henceforth by eql half yrly portions on, &c., clear of all taxes & dedons, wch annl rent-chge it is hby decld & agrd shl be chged not only upon the tolls & rates payable under the Act of Parliamt incorporatg the sd Co, but also upon the lands, works, & undertakg of the sd Co, & have priority & preference over the debs of the Co, & over the divds on the ordinary & preference capital of the Co, To HAVE & rece the sd yrly rent-chge expd to be hby grted as from the —— day of —— unto the sd B. & his hrs, To, UPON, & for the same uses, trusts, & pposes, as those to, upon, & for wch the rents & profits of the lands so sold & conveyed to the sd Co as afsd stood settled or assured at or immedly bfe the convce thof to the sd Co: AND IT IS HBY DECLD that these psnts are intd to operate & take effect as near to the form in Schdle B. to the Lands Clauses Consolidon Act, 1845, as the circes of the cases will admit: PROVD ALWAYS & it is hby decld & agrd that as to the yrly sum of £——, pt of the sd yrly rent-chge hby grted, the same shl be payable only so long as the sd lands & the sd Co & their assns shl be exonerated & indemnified by the pson or psons for the time being entled to the other lands comprd in the sd indre of settlemt from & agst all claims & demands, costs, damages, dis-

Agreement as to indemnity rent-charge.

Conveyance to company.

Witnesseth.

Grant of rent-charge.

Habendum.

To uses of settlement (*b*).

Proviso as to indemnity rent-charge.

(*b*) As to limiting a rent-charge to the uses of a settlement, see p. 605, note; s. 9 of the Settled Land Act, 1890, there referred to, would not apply to this case.

PREC. LXIII.

tresses, & expses in respt of all land tax & tithe rent-chge due & to grow due from or in respt of the sd lands so sold to the Co. IN WITS, &c.

LXIV.

PREC. LXIV.

CONVEYANCE *by a* RAILWAY COMPANY *of* SUPERFLUOUS LAND NOT *in a* TOWN (*a*).

Recitals.

PARTIES, Rly Co (hinafter refd to as the Co), 1; A., *tenant for life*, 2; B. & C., *trees*, 3. WHAS the Co is seised in fee simple free from incumbces of the pce of land hinafter mentd, & intd to be hby conveyed, wch is superfluous land of the Co, not required for the pposes of their undertakg, & the same adjoins land wch forms pt of the

Company seised of superfluous land.

Sale of superfluous land by railway companies.

(*a*) See the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 127 *et seq.* If the sale is of land not in a town, and not to an adjoining owner, the recital will be that notice has been given to all the adjoining landowners in succession offering to sell to them, and that they have all declined. As to what is superfluous land, see *Beauchamp* v. *G. W. Ry. Co.*, 3 Ch. 745; *Hobbs* v. *Midland Ry. Co.*, 20 Ch. D. 418; *G. W. Ry. Co.* v. *May*, 7 E. & Ir. Ap. 283; *London & S. W. Ry.* v. *Gomm*, 20 Ch. D. 562; *Hooper* v. *Bourne*, 5 App. Cas. 1; *In re Thackwray and Young*, 40 Ch. D. 34; and as to what is "land in a town," see *Carrington* v. *Wycombe Ry. Co.*, 3 Ch. 377; *L. & S. W. Ry. Co.* v. *Blackmore*, 4 E. & Ir. Ap. 610. For a form where the land is over a tunnel reserving the necessary easement and rights to the Company, see 2 Dav. Prec., pt. 1, 595, note. The Company usually stipulate that their title shall be accepted without investigation, and there will be no deeds to be covenanted to be produced. The sale must by s. 127 be without reservation; and a covenant by the purchaser to resell the land to the Company if required, vitiates the sale (*London & S. W. Ry.* v. *Gomm*, *ubi sup.*); but if the covenant relates only to a part of the land, only as to that part (*Ray* v. *Walker*, [1892] 2 Q. B. 88), and the Company may impose restrictions as to the user of the land, *Re Higgins*, 21 Ch. D. 95. A prohibition against building, &c., which would not avail against the Company's rights, revives on the re-sale of the land as superfluous land: *Bird* v. *Eggleton*, 29 Ch. D. 1012. As to the rights of the Company's assigns of surface lands as superfluous, where the Company has not purchased the mines, and subsidence has been caused, see *Pountney* v. *Clayton*, 11 Q. B. D. 820.

settled estes of the sd A., of wch he is tenant for life under an indre, &c., whof the sd B. & C. are the psnt trees : AND WHAS the Co have, by a notice in writg under the hand of their secretary, offered to sell the sd pce of land to ——, the vendor thof to the Co, but he has declined to pchase the same : AND WHAS the sd A., as tenant for life under the sd indre of, &c., has agrd with the Co for the pchase of the inhance in fee simple in posson free from incumbces, of the sd pce of land for the sum of £——, wch is intd to be pd out of moys in the hands of the sd trees arisg from a sale or sales of lands subjt to the trusts of the sd indre of, &c. : NOW THIS INDRE WITNETH that in conson of the sum of £——, pd by the sd B. & C. out of such moys as afsd by the diron of the sd A. to the Co (the rect, &c.), the Co, by the diron of the sd A., do hby grt (*b*) unto the sd B. & C., *pcels referrg to plan*, p. 417, the nos. on wch refer to the correspondg nos. on the Parliamentary deposited plans & book of reference thto of the Co relative to land in the sd parish of —— : *Habendum to B. & C. & their hrs to the uses of the settlemt*, p. 435. IN WITS, &c.

PREC. LXIV.

Notice to sell to vendor.

His refusal to buy.

Agreement for purchase by trustees.

Witnesseth.

Grant.

LXV.

CONVEYANCE *by the* COMMITTEE *of a* LUNATIC *under the* LANDS CLAUSES CONSOLIDATION ACT, 1845, *of* LANDS PURCHASED *by the* MANAGERS *of a* PUBLIC ELEMENTARY SCHOOL *under the* ELEMENTARY EDUCATION ACT, 1870 (*c*).

PREC. LXV.

PARTIES, A., "the committee of the este of B., a lunatic," 1 ; C., D., E., &c., *the managers of the school, or proposed*

(*b*) In a conveyance under the Lands Clauses Consolidation Act the word "grant" implies covenants for title (s. 132), which are substantially the same as those which would be implied by a conveyance by the Company as beneficial owners under the Conv. Act, 1881, s. 7; see as to implied covenants, Elph. N. & C. Interp. deeds, p. 423.

Covenants implied by word "grant."

(*c*) See the L. C. C. Act, 1845, 8 & 9 Vict. c. 18, s. 7 ; the Lunacy Act,

PREC. LXV. *school* (hinafter called the managers), 2. *Recite title of B. in fee*, p. 398 : AND WHAS by an inquison taken before ——, one of the masters in lunacy, on the —— day of ——, under a commission of lunacy, duly issued for that ppose, the sd B. was found to be a pson of unsound mind : AND WHAS by an order of ——, one of the masters in lunacy, made on the —— day of ——, "in the mre of B., a pson of unsound mind," it was ordered that the sd A. shd be the committee of the pson & este of the sd B. : AND WHAS the managers are the managers of a public elementary school, known as the —— School, at ——, in the parish of ——, & coy of —— [*or, if the school is not founded, say :* AND WHAS the managers are desirous of establishg a public elementary school, to be known as the —— School, at, &c. ; & they have obtained the approval of the Educon Departmt to the establishmt of such school] : AND WHAS by virtue of the powers vested in them resply by the Elementary Educon Act, 1870, the sd A. has agrd to sell condonally, upon the pper consent in that behalf being obtained, and the managers have agrd to purchase as a site for a [an additional] school-house for such school, the pce of land [with the messes and bldgs thron] hinafter expd to be hby conveyed at the price of £——, being a sum determined, &c., wch it was agrd should be taken in full compenson, &c., *see Precedent* LXI., p. 614 : AND WHAS, by an order made on the —— day of ——, by ——, in the mre of the sd lunacy, on the applicon of the sd A., it was ordered that the sd A. shd be at liberty to carry the sd condonal contract into effect, & that it shd be refd to the masters in

Recitals.

Inquisition in lunacy.

Appointment of committee.

The managers.

Conditional contract.

Order confirming contract.

1890, 53 Vict. c. 5, ss. 116, 117, 120 (*a*), 124, and the definition of "property" in s. 341. The sale may be in consideration of a perpetual rent-charge, *Re Ware*, [1892] 1 Ch. 344. See also the Elementary Education Act, 1870, 33 & 34 Vict. c. 75, s. 21, and note, *ante*, p. 617. Under the L. C. C. Act the conveyance appears to be properly made by the committee in his own name, and not, as under the Lunacy Acts (see Rules in Lunacy, 1892, r. 124), in the name of the lunatic; see the next Precedent. As to lunatics not so found, see the Lunacy Act, 1890, s. 116. As to the procedure where the vendor becomes lunatic after the contract, see the Act, ss. 120 (*i*), 135; *Re Pagani*, [1892] 1 Ch. 236.

Mode of conveyance by committee of lunatic.

lunacy to settle & approve of a pper convce of the sd pce of land & premes to the managers accdly, & that the sd A., as committee of the sd B., shd exte & join with all necy pties in extg such conveyance when approved by the sd masters: AND WHAS ——, one of the masters in lunacy, has settled & approved of these psnts as a pper convce of the sd pce of land and premes, psuant to the sd order of the —— day of ——; and in testimony of such his approval has signed his name in the margin of the first skin, & his name & allowce on the second skin hrof; *Recital that the pchase-moy has been pd into Ct, as in Precedent* LXI., p. 615 (*a*): NOW THIS INDRE WITNETH that for effectuatg the sd sale, and for the conson afsd, & under & psuant to the sd order of the —— day of ——, & the powers & provons of the Elementary Educon Act, 1870, & the Acts incorpd thwith, the sd A. as committee of the sd B. (*b*), doth hby grt & convey unto the managers, *pcels*, p. 415; *Habendum*, UNTO & TO THE USE of the managers, their hrs & assns, UPON TRUST for the pposes of a public elementary school, within the meaning of the Elementary Educon Act, 1870, & for no other ppose whatever (*c*). IN WITS, &c.

Approval of draft conveyance by master in lunacy.

Witnesseth.

Grant.

(*a*) See *Re Milnes*, 1 Ch. D. 28; *Re Buckingham*, 2 Ch. D. 690.

(*b*) The covenant against incumbrances implied by the committee conveying in that character under the Conv. Act, 1881, s. 7 (see p. 439) is a covenant binding the committee personally and not the estate of the lunatic. The powers of a committee to convey both under the L. C. C. Act, 1845, s. 7, and the Lunacy Act, or (in the case of a lunatic tenant for life) under the Settled Land Act, 1882, s. 62, are wide enough (as is conceived) to enable the committee to give the usual covenants for title so as to bind the estate of the lunatic; it seems doubtful, however, whether the Court will authorise the committee to enter into any covenants on behalf of the lunatic: *Re Fox*, 33 Ch. D. 37, where the opinion of the Court appears to have been against giving any such authority and to exclude covenants for title; but the decision only related to a covenant for payment in a mortgage deed.

As to covenants for title in conveyance of lunatic's estate.

(*c*) The Act requires (s. 21) "that the conveyance shall express that the land shall be held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of such purposes which may be specified, and for no other purpose whatever."

LXVI.

PREC. LXVI.

CONVEYANCE *of* FREEHOLDS *belonging to a* LUNATIC *by his* COMMITTEE, *subject to* RESERVATIONS *of* MINERALS *and* SURFACE RIGHTS *and* EASEMENTS, *and* RESTRICTIVE COVENANTS, *contained in the* CONVEYANCE *to the* LUNATIC (*a*).

PARTIES, A., *lunatic*, "a pson of unsound mind, actg by B., of, &c., as committee of his este," 1; the sd B., 2; C., *pchaser*, 3. *Recite convce to A., contg reservons to the vendors X. & Y., their hrs & assns, of minls, with rts of workg them by surface or underground works, & rts of way, & water, & other easemts, & contg also restrictive covts, entd into by A. with the vendors as to bldg on, & user of the land, the reservons & covts being noticed shortly; The pcdgs in lunacy; The condonal contract for sale,* "subjt to the reservons & restrons contd in the sd indre, of, &c.," *& the order confirmg the same, contg a clause authorisg the committee to rece the pchase-moy, & the approval of the convce by the master, as in Precedent* LXV.: NOW THIS INDRE WITNETH that in psuance of the sd contract for sale, & in conson of the sum of £—— now pd by the sd C. to the sd B., as such committee as afsd (the rect, &c.), the sd A., actg by the sd B. as such committee, & in obedience to the sd order, doth hby grt, & the sd B., as committee of the sd A. (*b*), doth hby confirm unto the sd C., *pcels*, p. 415: *Habendum to C. in fee subjt to reservons & restrons in former convce*, p. 434, *form* VII.; *Covt by C. with*

Recitals.

Witnesseth.

Grant.

Mode of conveyance by committee of lunatic.

(*a*) See references in p. 621, note, to the Lunacy Act, 1890. The committee conveys in the name and on behalf of the lunatic; see Rules in Lunacy of 1892, rule 124. As to a sale on behalf of a lunatic under the Settled Land Act, 1882, see s. 62 of the Act, and above, p. 511, note. An undivided share was held not to be saleable under the repealed Lunacy Regulation Act, 1853, without the concurrence of the co-owners, *Re Weld*, 28 Ch. D. 514; but under the Act of 1890, there appears to be no difficulty as to this. As to the power to sell under the Settled Land Act, 1882, in that case see *Re Gaitskell*, 40 Ch. D. 416; above, p. 511, note.

(*b*) As to covenants binding the lunatic, see above, p. 623, note.

A. to indemnify A. agst restrictive covts, p. 464, *form* VI.: [AND THE sd A., actg by the sd B., as such committee as afsd, doth hby, &c., *acknowemt & undertakg as to munimts*, p. 459 (*c*)]. IN WITS, &c. (*d*). PREC. LXVI.

LXVII.

CONVEYANCE *of* FREEHOLDS *by official and other* TRUSTEES *of a* CHARITY (*e*). PREC. LXVII.

PARTIES, A., of Whitehall, in the City of Westminster, *the official tree of Charity lands for the time being*, (hinafter refd to as the official tree), 1; B., C., & D., &c., being the trees

(*c*) The possession of the deeds by the committee or other custodians on behalf of the lunatic would, it is presumed, be deemed in law the possession of the latter, so that the acknowledgment, &c., is properly given in his name; see p. 456, note. Acknowledgment as to deeds in conveyance by the committee of a lunatic.

(*d*) The signature will be, "A. by B. committee of his este." The attestation will be, "Signed, &c., by the above-named B. as the committee, & in the name & on behalf of the above-named A., &c., & by the sd B. in his own name & as his own act & deed." A testimonium and attestation in the ordinary form would suffice; see *Lawrie* v. *Lees*, 14 Ch. D. 249. Form of execution of and attestation to a conveyance by the committee of a lunatic.

(*e*) See the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), ss. 24 & 26, authorising sales of charity estates with the sanction of the Board, and see also the Amendment Act of 1855 (18 & 19 Vict. c. 124), ss. 29, 35, and 36. By the Act of 1855, s. 37, the official trustee of charity lands may be authorised by the Board to convey lands, including those vested in him by the Act of 1853, s. 48, and the Act of 1855, s. 15. See also s. 12 of the Act of 1869 (32 & 33 Vict. c. 110, substituted for s. 16 of the Act of 1860, 23 & 24 Vict. c. 136), enabling a majority of the trustees to convey on behalf of all the trustees and the official trustee. As to official trustees, see the Charitable Trusts Act, 1887 (50 & 51 Vict. c. 49), ss. 4, 5, and 6. By the Mortmain Act, 1891, 54 & 55 Vict. c. 73, ss. 5, 6, 9, the sale of land acquired by a charity under the will of a testator dying after the passing of the Act is made obligatory, except as therein mentioned.

The Allotments Extension Act, 1882 (45 & 46 Vict. c. 80), has not taken away from the Charity Commissioners the power of authorising a sale of charity lands vested in them under the Charitable Trusts Acts: *Parish of Sutton to Church*, 26 Ch. D. 173.

PREC. LXVII.

Recitals.

of the, *name of Charity* (hinafter refd to as the trees), 2; & E., *pchaser*, 3. WHAS the pties hto of the 2nd pt are the duly constituted trees of the sd, *charity* (hinafter refd to as the Charity): AND WHAS the lands hinafter descd & intd to be hby conveyed form pt of the estes of the sd Charity: AND WHAS by an order made by the Board of Charity Commrs for England & Wales on, &c. [by a scheme made under the Endowed Schools Act, & approved by Her Majesty in Council on, &c.], the legal este in the land intd to be hby conveyed was vested in the official tree in trust for the sd charity: AND WHAS by an order of the sd Board made on, &c., the trees were authorised within —— months from the date thof to sell the lands descd in the schdle thto [being the lands hinafter descd & intd to be hby conveyed] for not less than the sum of £——, & to do & exte all pper acts & assurces for carrying the sd sale into effect, & to give a conclusive dischge to the pchaser for the pchase-moy to arise from such sale: AND by the same order the official tree was authorised & directed to concur in the convce of the sd land to the pchaser if he shd require such concurrce: NOW THIS INDRE WITNETH that in conson of the sum of £—— pd to the trees by the sd E. for the pchase of the fee simple of the sd lands (the rect whof the trees hby acknowe) the official tree, psuant to the authority given to him by the sd recited order, & at the reqt of the trees (testified by their exon hrof, but not so as to imply any covt) (*a*), hby conveys, & the trees as trees hby convey & confirm to the sd E. ALL, &c., *pcels*, to hold the same unto & to the use of the sd E., his hrs & assns: [*Acknowemt by trees as to munimts retained*, p. 459]. IN WITS, &c.

Authority to trustees to sell.

Authority to official trustee to concur.

Witnesseth.

Grant.

Habendum to purchaser in fee.

(*a*) The official trustee does not enter into any covenants; and the statutory covenant which would be implied by his conveying as trustee and under the Order is therefore excluded.

LXVIII.

CONVEYANCE *under a* JOINT POWER *of* APPOINTMENT *of* SURFACE LANDS, *and of* MINERALS *under other Lands which were* RESERVED *to the* VENDORS *on Previous* SALES *of the* SURFACE. PREC. LXVIII.

PARTIES, A. & B., *vendors*, 1; C., *pchaser*, 2: WHAS under or by virtue of an indre, &c., or by other assurces, instrumts, or means subseqt thto, divers messes, lands, & hds, situate in the parishes of, &c., in the coy of ——, & commonly known as the —— este (of wch the messes & land descd in the first pt of the first schdle hto form pt), stand limd to such uses as the sd A. & B. shl by deed jtly appt, & in default of such apptmt to the use of the sd A. for his life witht impeachmt of waste, with remr to the use of the sd B., his hrs & assns: AND WHAS divers lands formg pt of the sd —— este, situate in the respive parishes of, &c., in the sd coy of ——, have from time to time been disposed of by the sd A. & B., by way of sale, exchange, or orwise, with an exception or reservon of the coal & ironstone & other mines or minls in or under the same, with rts of workg & gettg such reserved mines or minls by means of underground or surface workgs, or by underground workgs only, & such reserved mines, minls, & rts remain subjt to the uses to wch the sd —— este is subjt as hinbfe recited; AND WHAS the lands & hds so sold or disposed of with a reservon or exception of minls, are descd in the second pt of the sd first schdle hto, in wch the names of the respive psons to whom the same resply were conveyed or disposed of, & the dates & parlars of the respive convces or assurces thof contg such reservons or exceptions of minls are specified: AND WHAS the lands descd in the sd first schdle hto are delineated in the map or plan hrunto annexed, in wch the lands comprd in the first pt of such schdle are coloured ——, & the lands comprd in the second pt thof are

Recitals. Title to surface. Title to minerals. Reference to schedule and plan.

PREC. LXVIII.

Contract for sale.

coloured ——: And whas the sd A. & B. have agrd with the sd C. for the absolute sale to him of the fee simple & inhance of the lands descd in the first part of the sd first schdle hto, & of the mines of coal & ironstone & other mines & minls, so reserved as afsd in or under the lands descd in the second pt of such schdle for the sum of £——:

Purchase-money to be paid to vendors jointly.

And whas it has been agrd that the whole of the sd pchase-moy shl be pd to the sd A. & B. jtly, & upon their jt rect:

As to succession duty.

And whas the sd B. has agrd to enter into such covt for paymt of the succession duty [and estate duty if any], wch will become payable on the death of the sd A. in respt of the premes intd to be hby assured, as is hinafter contd:

Witnesseth.

NOW THIS INDRE WITNETH, that in psuance, &c.,

Appointment.

& in conson of the sum of £—— now pd by the sd C. to the sd A. & B. (the rect, &c.), they the sd A. & B. as benefl owners, in exercise of every power or authority enablg them in this behalf under or by virtue of the sd indre of, &c., or any other convce or assurce subseqt thto, or any exception or reservon contd in any such convce or assurce or by any other means whatsr, do & each of them doth hby appt, & as & accdg to their sevl estes & intts, & by way of further

Grant.

assurce do & each of them doth hby grt & confirm unto the

Surface parcels.

sd C., First, all those closes or pcels of land, messes, tenemts & hds situate, &c., parlarly descd in the first pt of the first schdle hto, & coloured —— in the plan hto annexed, includg all mines & minls in, upon, or under the

Minerals.

same lands & premes, And Secondly, all the coal & ironstone, & other mines & minls whatsr, whether opened & in workg or not, wch under or by virtue of the exceptions or reservons contd in the respive convces or assurces mentd in the second pt of the first schdle hto or orwise the sd A. & B. or eir of them are or is entld to or have or has power to appt or dispose of, lying or being in or under the lands & hds situate, &c., wch are parlarly descd in such second pt of the sd first schdle, & are coloured —— in the sd map or

Powers of working.

plan, Togr with all such liberties, powers, & authorities of enterg upon the sd lands descd in the second pt of the sd

first schdle, & coloured —— in the sd map or plan, & searchg for, workg, gettg, dressg, & carrying away the sd coal, ironstone, & other mines & minls, & makg pits or shafts, & excavatg & drivg underground levels, passages, adits, & headways, laying down tramways, other ways & roads underground, & erectg bldgs, engines, pumps, machy, & works, & stackg or laying up the minls or refuse raised out of the sd premes, & makg roads or tramways over the surface of the sd lands or any other lands for workg, gettg, & carrying away the sd minls or orwise in relon thto, as under or by virtue of the sd respive convces or assurces mentd in the second pt of the sd first schdle hto or orwise, the sd A. & B. or eir of them are or is entled to or have or has power to dispose of, BUT SUBJT to such liability as the sd A. & B. or eir of them are or is subjt to of makg compenson to the surface owners or occupiers of the sd lands & premes descd in the second pt of the sd first schdle, for any damage or injury done or caused by the exercise or use of any of the liberties & authorities afsd, TOGR WITH all way-leaves, water-courses, rts, easemts, & appurts, held, used, occupied, or enjoyed in connon with any of the mines & minls intd to be hby assured, or for workg, obtaing, gettg, or carrying away such mines & minls or the produce thof or orwise in relon thto: *Habendum to C. in fee,* subjt to the leases or agrmts for leases mentd in the sd first schdle hto, p. 433: *Provo restrictg liability of A. & B. under implied covts for title,* p. 452; *Covt. by B. for paymt of succession duty* [*and este duty, if any*], *on death of A.*, p. 463, *& see* p. 561, *note (c)*; *Acknowemt & undertakg by A. as to munimts,* p. 459, *see* p. 565, *note.* IN WITS, &C.

Subject to liability of making compensation.

General words.

[*Schdle of pcels in two pts, the composon of wch is indicated by the recitals.*]

[*Schdle of Munimts.*]

LXIX.

PREC. LXIX.

GRANT *of* RIGHT *of* WAY.

Recitals.

PARTIES, A., *grtor*, 1; B. & C., *grtees*, 2. *Recite the closg of a lane passg through lands of A., under the Highway Act*, 5 *&* 6 *Will.* IV., *c.* 50, *ss.* 84 *to* 92, *on the applicon of A., the land being bounded as to pt by a farm & lands vested in B. & C. as devisees in trust under the will of X.:* AND

Agreement.

WHAS previously to the applicon for the sd order it was agrd by & betn the pties hto that the sd A., in conson of the sd B. & C. consentg to & not opposg such applicon, shd exte & enter into such grt & covt to & with them as trees of the will of the sd X., for securg a substituted rt of way over the

Witnesseth.

lands of the sd A., & orwise, as are hinafter contd: NOW THIS INDRE WITNETH that in psuance of such agrmt,

Grant.

& for the conson afsd, the sd A., **as benefl owner**, doth hby

Right of way.

grt unto the sd B. & C., FULL & free rt & liberty at all times hrafter, *continue as at* p. 421, along, over, & upon a new road or lane made through the lands of the sd A., situate, &c., betn the points marked, &c., in the plan drawn in the margin hrof, & the bridge over the watercourse as shown in the sd plan, & being —— feet in length, & ——

Covenant by grantor.

feet in width (*a*), AND the sd A. doth hby, [to the intent so far as the law will permit to bind the sd lands, & the pson or psons from time to time entled to or intted in the same, but not so as to incur any psonal liability except for his own acts], covt with the sd B. & C., their hrs & assns, that he the sd A., his hrs & assns, or the pson or psons entled or inttd as afsd, will at his or their own cost at all times hrafter, keep & maintain the sd new lane or road over wch a rt of way is hinbfe grted, includg the sd bridge over the water-

Proviso.

course, in a pper state of repair & condon: PROVD ALWAYS

(*a*) As to the importance of defining the way, see *Deacon* v. *South Eastern Ry. Co.*, 61 L. T. 377. As to the covenant to repair not being binding on assigns of A, even with notice, see p. 314, note.

that it shl be lful for the sd A., his hrs & assns, to place & keep gates at the points marked, &c., on the sd plan, he & they maintaing such gates in good repair & condon. IN WITS, &c. PREC. LXIX.

LXX.

CONVEYANCE *of an* ADVOWSON. VARIATIONS *for conveyance of a* NEXT PRESENTATION *only, and where the Vendor thereof is a* TENANT *for* LIFE (*b*). PREC. LXX.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. WHAS the sd A. is seised of the advowson & perpetual rt of presenton of & to the rectory & parish church of ——, in the coy of ——, for an este in fee simple in posson [for the term of his life under the limons of an indre of settlemt dated, &c., & expd, &c.]; AND WHAS the sd A. has agrd with the sd B. for the sale to him of the sd advowson, or perpetual rt of presenton [the first or next turn or rt of presenton, *if A. be tenant for life, add* "if the same shl become vacant during the life of the sd A."] for the sum of £——; NOW THIS INDRE WITNETH, *conson* (the rect, &c.), the sd A., **as benefl owner** (*c*), doth hby grt unto the sd B., *pcels, advowson, or* Recitals. Title of vendors. Agreement for sale. Witnesseth. Grant.

(*b*) As to sales of advowsons and next presentations, see 2 Dav. Prec. pt. 1, 30, 37; 1 Dart, V. & P. 280; and the "Incumbents' Resignation Act, 1871," 2 Dav. Prec. pt. 1, 356; and as to the law of Simony, see Phillimore on Ecclesiastical Law; and see also the report of the Royal Commission on Ecclesiastical Benefices of 1880, and the evidence appended. As to advowsons belonging to municipal corporations, see the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 121, 122.

(*c*) The express covenants for title if inserted would be as follows:

For rt to convey, p. 443, "the sd premes hby grted:" AND THAT THE sd B., his hrs, [*or*, exs, ads,] & assns, may present to the sd rectory & parish church of ——, at all times hrafter whenever the same shl become vacant, [when & if the same shl first or next become vacant, *if A. be tenant* Express covenants for title.

PREC. LXX. Advowson. Next presentation.

next presenton, see pp. 372, 420: *If the latter, & A. be tenant for life, add,* wch durg the life of the sd A., shl first or next happen after the date of these psnts: *Habendum, for advowson,* "UNTO & TO THE USE of the sd B., his hrs & assns," *for next presenton,* "UNTO the sd B., his exs, ads, & assns." IN WITS, &c. (*a*).

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for life, add, "durg the life of the sd A."] except in the case of the incumbent being appted to a bishopric, & that the pson so presented may quietly & peaceably be inducted & enter into & upon & hold & enjoy the sd rectory & parish church & the parsonage house, glebe lands, tithe rent-chge, emolumts, rts, & appurts thto belonging, witht any interruption by the sd A., or any pson claimg through or in trust for him, *free from incumbces, & for further assurce,* p. 443, "to the use of the sd B., his hrs & assns [unto the sd B., his exs, ads, & assns], & for enablg him & them to psnt to the sd rectory & parish church whenever the same shl become vacant [when & if the same shl next become vacant [durg the life of the sd A.]], except as afsd."

As to payment of interest till vacancy.

(*a*) It is sometimes agreed that the vendor shall pay interest to the purchaser till a vacancy; see *Sweet* v. *Meredith,* 3 Giff. 610; in that case the vendor was not the incumbent, but that distinction does not seem to be regarded in practice, see Evidence taken by the Royal Commission of 1880. This payment may be secured by a bond of the vendor, or by his covenant, "that he, the sd A., his hrs, exs, or ads, will, from the date of these psnts, & in the meantime, until the sd rectory & parish church shl next become vacant [*add, if thought necy,* or if the psnt incumbent of the sd rectory & parish church shl be appted to a bishopric & the Crown shl thrupon psnt to the sd rectory & parish church, then until the sd rectory & parish church shl become vacant for the second time after the date of these psnts,] pay, &c."

Sometimes the purchase-money is invested in the names of trustees upon trusts for investment and payment of the income to the purchaser until the occurrence of a vacancy and subject thereto in trust for the vendor.

LXXI.

PREC. LXXI.

CONVEYANCE *of* GLEBE *land by a* RECTOR, *with* CONSENT *of the* PATRON *and the* ECCLESIASTICAL COMMISSIONERS *under the Ecclesiastical Leasing Acts* (*b*) *to a* COUNTY COUNCIL (*c*). GRANT *and* RESERVATION *of* RIGHTS *of* WAY.

PARTIES, A., "rector of the rectory & parish church of ——, in the coy of ——," 1; B., "patron of the sd

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(*b*) The conveyance in this case is made under the Acts which have the above misleading short title, namely, 5 & 6 Vict. c. 108 (1842); 21 & 22 Vict. c. 57 (1858); and 28 & 29 Vict. c. 57 (the latter relating only to sales for perpetual chief rents). The authority to sell is given by the Act of 1858, s. 1. As to the consents necessary, see the Act of 1842, s. 20 *et seq.*, and the Act of 1858, s. 1. As to the payment of the purchase-money, see the Act of 1858, s. 2. The execution of the conveyance by the necessary consenting parties is conclusive that the Acts have been complied with; see the Act of 1842, s. 7. By the Act of 1858, s. 1, three months' notice was to be given to the bishop, but the Glebe Lands Act, 1888, s. 11, substitutes for this the notice prescribed by the rules under that Act; see the rules of December, 1888. The Act of 1858, by s. 6 excepted out of its operation lands capable of being sold under 14 & 15 Vict. c. 104 (extended by 24 & 25 Vict. c. 105, s. 3, to rectors and vicars) *i.e.*, lands subject to leases renewable under the old practice, but as that Act must be almost spent the exception is unimportant. See also the provisions in s. 3 of 24 & 25 Vict. c. 105, giving to incumbents all the powers of sale, &c., possessed by any Ecclesiastical Corporation under any Act in force.

As to sales of glebe lands. Ecclesiastical Leasing Acts.

The Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), has created a new mode of procedure for the sale of glebe lands under the sanction of the Land Commissioners (now the Board of Agriculture) in lieu of the Ecclesiastical Commissioners, and with an enlarged range of investment for the purchase-money; but by s. 11 the powers of sale under the Ecclesiastical Leasing Acts are kept alive; and by s. 5, the Act is not to apply to land subject to a lease for originally more than 21 years, or where the rent is less than two-thirds the full value. If the sale were made under that Act the Board of Agriculture would not be made parties, but the order of the Board sanctioning the sale would be recited.

Glebe Lands Act, 1888.

(*c*) See the Local Government (England and Wales) Act, 1888, 51 & 52 Vict. c. 41, s. 65, giving power to acquire land, and incorporating the

As to convey-

PREC. LXXI. rectory," 2; the Ecclesiastical Commrs for England, 3; the Coy Council of the administrative coy of —— (hinafter called the Coy Council), 4. *Recite seisin of rector:* AND WHAS it has been made to appear to the satisfon of the sd Commrs, that the sd pce of land may to the permanent advantage of the este or endowmts belonging to the sd rectory, be sold for the sum & in mner hinafter mentd: AND WHAS at a meetg of the Coy Council held on the —— day of —— it was resolved on the recommendon of the main roads & bridges committee that a sum not exceedg £—— shd be grted out of the coy fund to enable the sd committee to pchase the sd pce of land. AND WHAS the sd A., with the consent of the sd B., as patron of the sd rectory, & with the approval of the sd Commrs, has agrd to sell & the Coy Council have agrd to pchase, the fee simple in posson of the sd pce of land, togr with the rt of way hby grted over other pts of the glebe lands of the sd rectory, free from all chges & incumbces, but subjt to such reservon as is hinafter contd, at the price of £——: AND WHAS due notice of the sd proposed sale was given to the Rt Revd. —— Lord Bishop of ——, on the —— day of —— last: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the sum of £—— pd by the treasurer of the sd coy out of the coy fund to the acct of the Ecclesiastical Commrs at the Bank of England, as directed by the sd Ecclesiastical Commrs in that behalf (the paymt of wch sd sum is intd to be acknowed by a memdum indorsed on these psnts (*a*), &

Agreement for sale.

Notice given to Bishop.

Witnesseth.

ances to County Councils.

provisions of ss. 176, 177, and 178 of the Public Health Act, 1875; s. 79, sub-s. (1), as to the corporate name, and dispensing with a licence in mortmain; s. 79, sub-s. (3), incorporating the various enactments relative to the acquisition of land on behalf of County or Quarter Sessions or Justices; and s. 80, as to payments out of the County Fund. See also as to dwellings for the working classes, the Housing of the Working Classes Act, 1890, 53 & 54 Vict. c. 70; as to allotments, the Small Holdings Act, 1892, 55 & 56 Vict. c. 31, and as to the acquisition of land for volunteer corps, the Military Lands Act, 1892, 55 & 56 Vict. c. 43. If the purpose for which the land is acquired amounts to a "charitable use," the requirements of Part II. of the Mortmain Act, 1888, 51 & 52 Vict. c. 42, as to enrolment and otherwise, must be complied with.

(*a*) See p. 412, note.

the paymt whof the sd Commrs do hby acknowe), the sd A., PREC. LXXI.
with the consent (hby testified) of the sd B., as patron of
the sd rectory of ——, & also with the approval (hby
testified) of the sd Ecclesiastical Commrs, & in psuance of
the power or authority in that behalf given to him by the Grant.
Ecclesiastical Leasg Acts, & of every other power or
authority enablg him in this behalf doth hby grt unto the
Coy Council, *pcels*, p. 415, TOGR with, *rt of way*, p. 421 :
Reservon to "the sd A., his succors & assns," *of rt of way*,
p. 429 : TO HOLD the same UNTO & to the use of the Coy Haben-
Council, their succors & assns, SUBJT to the reservon hinbfe dum.
contd, & also subjt to the tithe commuton rent-chge (if any),
& to all other (if any), duties, paymts, & obligons, eccle-
siastical & civil, chged upon or payable out of the sd premes
hby grted, & to all rts of way & easemts (if any) affectg the
same : *Covt by A. agst incumbces*, p. 446 (*b*). IN WITS, &c.

LXXII.

CONVEYANCE *by the* ECCLESIASTICAL COMMISSIONERS PREC.
of the REVERSION *of* LANDS *and* TITHE RENT- LXXII.
CHARGE *on other lands* EXPECTANT *on a* LEASE *for*
LIVES (*c*).

PARTIES, The Ecclesiastical Commrs for England, 1 ; A.
& B., *the holders of the lease for lives*, 2 ; C., *pchaser*, 3.
WHAS the pces of land, tithe rent-chge or rent-chges, & Recitals.
hds hinafter mentd were formerly pt of the possons of the Title to re-
Archbishop [Bishop] of —— in rt of his See ; *Recite lease* version.
for lives of lands & tithes on other lands ; AND WHAS by Lease for lives.

(*b*) See p. 439, note. Incumbents selling under the above Acts do not usually give covenants for title.

(*c*) See the Acts referred to, Dav. Prec., pt. 1, p. 460, note ; and Phillimore on Ecclesiastical Law, pp. 1692 and 2094 *et seq.*

PREC. LXXII.

Reversion vested in Ecclesiastical Commissioners.

virtue of the sevl Acts of Parliamt relatg to the sd Ecclesiastical Commrs, & of an Order of Her Majesty in Council, dated, &c., & duly published in the London Gazette on the —— day of——, ratifying a scheme of the sd Ecclesiastical Commrs thrin recited or refd to, the revon of the sd pces of land, tithe rent-chge, & premes, comprd in the sd lease of, &c., & the rent reserved by the same lease became vested in the sd Ecclesiastical Commrs for the pposes of their sd

Scheme.

Acts: AND WHAS the sd Commrs, in psuance of the sd Acts of Parliamt, prepared & laid before Her Majesty in Council a scheme dated, &c., & thby recommended & proposed, &c., *recite scheme authorisg the Commrs to dispose of the estes of the See with the consent of the respive holders;* AND WHAS the

Confirmation of scheme.

sd last mentd scheme was by an Order of Her Majesty in Council dated, &c., & published in the London Gazette of, &c., duly ratified & made effectual in law; AND WHAS the sd

Contract for sale.

Ecclesiastical Commrs, in psuance of their sd Acts, & the sd recited scheme & Order in Council, dated resply, &c., have, with the consent (hby testified) of the sd A. & B., agrd with the sd C. for the sale to him of the revon, este, & intt of the sd Commrs in the sd lands, tithe rent-chge, & premes comprd in or subjt to the sd lease, subjt as hinafter mentd, for the sum of £——, being the conson wch upon due calculon & enquiry has appeared to the sd Commrs to

Witnesseth.

be just & reasble: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the sum of £——, now pd by the sd C. to the acct of the Ecclesiastical Commrs at the Bank of England, as directed by the sd Commrs in that behalf (the rect of wch sd sum is intd to be

Grant.

acknowed by a memdum endorsed on these psnts & the paymt whof the sd Commrs do also hby acknowe), They, the sd Ecclesiastical Commrs for England, in psuance of the sd Order in Council of the —— day of ——, & of every or any other power or authority enablg them in this behalf, & as & accdg to their revon, este, & intt, & with the consent (hby testified) of the sd A. & B. as the psons in whom the sd lease is now legally vested, do hby grt unto the sd C.,

PREC. LXXII.

ALL THAT the revon in fee simple expectant upon the determinon of the hinbfe recited lease & all other the este & intt (if any) of the sd Ecclesiastical Commrs of & in, 1st, ALL THOSE pces or pcels of land, &c., & 2ndly, ALL THAT or those the sd tithe commuton rent-chge or rent-chges, amtg to £—— p. a., arisg or payable in respt of the lands in the parish of ——, in the coy of ——, wch are parlarly mentd or descd in the schdle hto, but variable accdg to the provons of the Acts for the commuton of tithes, togr with all powers, rts, & remedies, for the recovery of such rent-chge or rent-chges: *Habendum to C. in fee*, p. 432, SUBJT TO all rts of way & other easemts, & subjt to & chged with all tithes or rent-chges payable in lieu thof, & all rates, taxes, chges, & outgoings whatsr by law affectg the same resply: *Covt by Ecclesiastical Commrs agst incumbces, see* p. 618, *note*. IN WITS, &c.

Parcels.

Habendum.

LXXIII.

ASSIGNMENT *of* CHARGE *in respect of* REDEEMED LAND TAX (*a*).

PREC. LXXIII.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. WHAS by a certfe bearg date, &c., under the respive hands & seals of two of the Commrs appted for the pposes of the Act 42 Geo. 3, c. 116, the sd Commrs certified that they had agrd with X. for the redmon by him of £—— land tax, being the land tax chged upon a messe, &c. assessed in the land tax

Recitals.

Certificate of redemption.

(*a*) The redemption of the land tax was effected under 42 Geo. 3, c. 116; see especially s. 10, giving the power to contract; s. 23, as to the payment of the consideration in money; s. 27, as to the mode of payment; s. 38, as to the receipt to be given for the money; and s. 123, as to redemption by limited owners, keeping alive the charge for their benefit as personal estate.

As to the redemption of land tax.

PREC. LXXIII.

assessmt of the sd parish as thrin mentd (wch premes were held by the sd X. as benefl lessee for a certn term of yrs thrin) & the conson for such pchase was stated by an endorsemt on the sd certfe to be the sum of £——: AND WHAS the sd sum of £—— was duly pd by the sd X. in psuance of the sd contract as appears by the certfe of the Deputy Recr-Genl of the coy of —— endorsed on the sd certfe, & the sd certfe was duly registd psuant to the dirons of the sd Act, & the sd premes thrupon became wholly freed & exonerated from the land tax & chgeable with the sum of £——, being the amt of the mos pd by the sd X. as the conson for the redmon of the sd land tax, & with the paymt of the yrly sum of £——, being the amt of the land tax redeemed, by way of intt thron for the benefit of the sd X. his exs, ads, & assns; *Recite devolon of chge in respt of redeemed land tax to A.*; AND WHAS the sd A. has agrd with the sd B. for the absolute sale to him of the sd sum of £—— chgeable on the sd messe & premes togr with the sd yrly sum of £——, payable by way of intt thron as afsd & all benefit under the sd recited contract for the sum of £——: NOW THIS INDRE WITNETH that in psuance, &c., & in conson, &c. (the rect, &c.) the sd A., **as benefl owner**, doth hby grt & assn unto the sd B. ALL THAT the sd sum of £—— with wch the sd messe & premes became chgeable for the benefit of the sd X., his exs, ads, & assns as hinbfe is mentd & also the sd yrly sum of £—— payable by way of intt for the sd sum of £—— as afsd & all future paymts thof togr with the sd recited contract for redmon of the sd land tax & the full benefit thof To hold the same unto the sd B. his exs, ads, & assns. IN WITS, &c.

Agreement.

Assignment.

LXXIV.

PREC. LXXIV.

ASSIGNMENT *of the* GOODWILL *and* PLANT *of a* BUSINESS *by* PARTNERS, *and of* LEASEHOLDS *vested in one* PARTNER *in* TRUST *for the* FIRM. COVENANTS *by* VENDORS NOT *to* CARRY ON BUSINESS (*a*), *and by the* PURCHASER *to pay a* SHARE *of the* GROSS RECEIPTS *during a limited time to the* VENDORS.

Parties, A. & B., *vendors* (hinafter called the vendors), 1; C., *pchaser* (hinafter called the pchaser), 2. *Recite lease to A.*, p. 393: AND WHAS the vendors have for some time past carried on the business of —— in the sd messe & premes comprd in the sd lease as coptners, & the sd messe & premes are ptnp ppty, although no formal assnmt or declon of trust thof has been exted by the sd A.: AND WHAS the vendors are also entled to certn fixed & movable machy & plant, utensils, materials for manufacture, manufactured goods, stk-in-trade, chattels, & fixtures, used in their sd business [wch are specified in the first schdle hto, *or*, in an inventory signed by the sd pties] & are also entled to certn book debts [the parlars whof are specified in the second schdle hto, *or*, "in the books of acct of the sd business"] & have also entd into or are entled to the benefit of certn contracts & orders [wch are mentd in the third schdle hto, *or*, "appear in the books of the sd business"] for the supply of goods manufactured or sold by them; [AND WHAS the vendors are entled to the sd business & ptnp ppty in the shares follg, namely, the sd A. to three eql fourth pts thof, & the sd B. to the remaing fourth pt thof]: AND WHAS the vendors have agrd with the pchaser for the sale to him of the (*b*) goodwill of the sd business, togr with the sd

Recitals.

Business.

Title to plant, &c.

Shares in business.

Contract.

(*a*) As to covenants of this nature, see p. 245, note, and Lindley on Partnership, p. 440, *et seq.*, and cases there referred to.

(*b*) As to goodwill, see p. 366, note (*d*).

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messe, machy, plant, utensils, materials for manufacture, manufactured goods, stk-in-trade, chattels, fixtures, & book debts, & the benefit of the sd contracts & orders, for the sum of £——, & such share of the gross earngs & rects in respt of the sd business as is hinafter covted to be pd by the pchaser: AND WHAS it has been also agrd that the assnmt to be exted for the ppose of carrying out the sd sale shl contain the covts & provons hinafter expd: NOW

Witnesseth.

THIS INDRE WITNETH, that in psuance, &c., *conson*, (the rect, &c.), & of the covt by the pchaser hinafter contd,

Assignment of leaseholds.

the vendors **as benefl owners**, accdg to the respive estes & intts, legal or equitable, to wch they are resply entled in the sd leasehd premes as hinbfe recited, & all other, if any, their respive estes or intts thrin, do resply hby assn unto the pchaser, *complete the assnmt of the leasehds*, "& the fixed machy & fixtures in & upon the sd premes," *& habendum as in Precedent* VII.: AND THIS INDRE ALSO

Further witnesseth.

WITNETH, &c., they, the vendors, **as benefl owners**, accdg to the respive estes & intts to wch they are resply entled as hinbfe appears, & all other, if any, their respive estes or intts thrin, do resply hby assn unto the pchaser, ALL THAT

Assignment of goodwill, &c. (*a*).

the goodwill, intt, & connon of them, the vendors, & each of

As to stamp duty on sale of goodwill.

(*a*) Goodwill is "property" within the Stamp Act (*Potter* v. *Commissioners, &c.*, 10 Exch. 147); and not being "goods" within the exception in the Stamp Act, 1891, referred to above, p. 368, note, the assignment thereof (if there is no preliminary contract so stamped) is chargeable with *ad valorem* duty as a conveyance; and if the purchaser takes upon himself and indemnifies the vendor against the debts, additional duty would be payable on the amount of the debts as part of the consideration under s. 57 of the Act of 1891. A mere contract for the sale of a goodwill on certain conditions precedent being fulfilled was not chargeable as a transfer (*Commissioners, &c.* v. *Angus*, 23 Q. B. D. 579); but now, if there is a preliminary contract, the *ad valorem* duty is, under s. 59 of the Act of 1891, imposed on the contract. As the important matter as regards the goodwill consists of the vendor's covenants, it was formerly the practice to save the duty on the value of the goodwill (where material) by omitting it from the assignment and apportioning the purchase money, leaving the matter to rest on the preliminary contract and the covenants (if any) in the assignment. This expedient, however, cannot now be had recourse to, and the only way of escaping payment of the duty is to dispense with the contract, the purchaser taking merely a receipt for the

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them, of, in, & concerng the sd business of ——, & also all the sd movable machy, plant, utensils, materials for manufacture, manufactured goods, stk-in-trade, chattels, & book debts, & also their respive intts in & under the sd contracts & orders, *Power of atty*, p. 468 (*b*): To HOLD the same UNTO the pchaser, his exs, ads, & assns, absolutely: *Covt by the pchaser with the vendors*, their exs, ads, & assns, & septely with each of them, his exs, ads, & assns, that he, the pchaser, will carry on (*d*) the business of —— in the sd messe & premes first hinbfe assned for & during the term of —— yrs from the date of these psnts, if he, the pchaser, & eir of them, the vendors, shl so long live, & further will pay to the vendors, or the survor of them, for & in respt of each of the successive yrs endg on the —— day of ——, of the sd term of —— yrs, if the pchaser, & also the vendors, or one of them, shl be livg at the end of each respive yr, one eql —— pt of the gross earngs & rects in respt of the sd business, witht any dedon whatsr except the rent payable under the sd indre of lease, such one eql —— pt to be pd on or bfe the —— day of —— next after the end of the yr in respt of wch it shl become due as afsd: PROVD ALWAYS, & it is hby agrd & decld that in case the sd gross earngs & rects in respt of the sd business, witht any dedon save as afsd, in any yr of the sd last mentd term, shl be less than the sum of £——, then the pchaser shl not be required to make any paymt in respt of such yr: *Jt & sevl covts by the vendors* that they, the vendors, will not, nor will eir of them, or the exs or ads of eir of them, revoke any of the powers or authorities hinbfe given to the pchaser, his exs, ads, or

Covenant by C. to pay share of gross receipts (*c*).

Proviso in case of gross receipts falling off.

Covenant not to revoke powers.

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purchase-money and a deed of covenants (if required); care being taken that the receipt and accompanying deed do not contain any recitals or statement which might operate in law as a transfer or contract so as to be chargeable. See p. 588, note. Query, however, whether, if the goodwill attaches to the land, the increase in the value of the land which is attributable to the goodwill, can be severed for the purpose of the conveyance; see per Lindley, L.J., 23 Q. B. D. 594, 597.

(*b*) As to making this power irrevocable, see p. 201, note.

(*c*) See the Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 2 (2), (3) (*e*), s. 3.

(*d*) See *McIntyre* v. *Belcher*, 14 C. B. N. S. 654.

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assns, or rece or rele any of the debts hby assned, or rece any moy or goods wch may become receivable under any of the contracts or orders, the benefit whof is hinbfe assned, or rele any of such contracts or orders: AND FURTHER, that they, the vendors will not, nor will eir of them, at any time or times hrafter [during the term of —— yrs from the date of these psnts], eir alone or jtly, or in ptnp with any other pson or psons whomsr, directly or indirectly, eir by themselves or himself, or as agents or agent or orwise, carry on, manage, or be concerned, engaged, or intted in the business of ——, within —— miles [measured along the highway] from —— afsd [in any pt of the United Kingdom] [& will not authorise their or his name, or the name of the sd firm of ——, to be used in any way for the ppose of any such business in any pt of the United Kingdom by any pson or psons other than the pchaser, his exs, ads, & assns (*b*)]: [AND FURTHER, that the sd B. will, at all reasble times durg the space of —— months from the date of these psnts, in case he shl so long live, at the reqt & at the expse of the pchaser [accompany him &] introduce him to the customers, agents, ppals, & correspondents of the vendors in their sd business, & use his utmost reasble endeavours to secure to the pchaser the full benefit & advantage of the connon of them, the vendors, in the sd business]: [PROVD ALWAYS that the sd B. shl not be bound to go more than —— miles from —— afsd, or to attend psonally at the offices of the sd business for the pposes last afsd]: [*If the outstandg book debts are retained by the vendors the follg clause may be inserted*, PROVD ALWAYS that the vendors, their exs or ads, shl be entled to use the offices of the business, & to have access thto, & to the books & accts thof, so long & to such extent as may be necy for gettg in the outstandg book debts due & owg to them, & for windg up their business genlly:] *Covt by the pchaser with vendors, & with each of them, for*

Not to carry on trade (*a*).

To introduce purchaser to customers.

Vendors to have access to books.

Purchaser to in-

(*a*) Compare bond for this purpose, p. 245.

(*b*) As to the right of the purchaser to use the vendor's name, see *Levy* v. *Walker*, 10 Ch. D. 436.

indemnity agst rent & covts of lease, p. 461: And that the pchaser, his hrs, exs, or ads, will at all times keep the vendors, & each of them, & their respive hrs, exs, & ads, indemnified in respt of the sd contracts or orders, the benefit whof is hby assned, & agst all pcdgs, costs, damages, claims, demands, & liability by reason of the non-pformce or non-exon of the sd sevl contracts or orders: [AND THE pchaser doth hby bind himself to the vendors resply & their respive exs & ads in the sum of £—— as ascertained & liquidated damages that, in carrying on the sd business, the pchaser, his exs or ads, or his firm or his or their assns, will not trade in or make use of the names of the vendors or eir of them, or the name of their sd firm, or let any of such names appear on any invoice, labels, or trade-marks, or in any other way connected with the sd business: PROVD ALWAYS that the pchaser, his exs or ads, &c., shl be at liberty at all times hrafter & for all pposes connected with the sd business, to use & employ after his or their own name or names the words "succors to ——," & for the period of twelve calr months from the date of these psnts to retain the name of the sd firm of —— on the labels as the same now appears.] IN WITS, &c. (*c*).

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demnify vendors against rent, &c., and breaches of contract.

Covenant not to use names of vendors.

[*The Schdles.*]

LXXV.

CONVEYANCE *by a* SURVIVING PARTNER *and* EXECUTORS *and* DEVISEES IN TRUST *of a deceased partner of* FREEHOLD *and* LEASEHOLD BUILDINGS, MACHINERY, *and fixed* PLANT, *in connection with*

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(*c*) For the protection of the purchaser, notice of the transfer should be given to the parties to the contracts and orders, and to the debtors whose debts are assigned.

FREC LXXV.

the sale of a BUSINESS *including* TRADE MARKS (*a*), *as a* GOING CONCERN *to a* LIMITED COMPANY *who assume the* DEBTS AND LIABILITIES. THE LEGAL ESTATE *in* PART *of the* PROPERTY *being in* ONE *of the* PARTNERS.

PARTIES, A., *continuing ptner*, 1; B. & C., *exs & devisees in trust of deced ptner*, 2; The —— Co (hinafter called the Co), 3. WHAS X. late of —— deced, for some time prior to his dece carried on the business of —— at —— in ptnp with the sd A., under the firm of ——: *Recite will of X., death & probate*, p. 403: AND WHAS the sd business has been carried on upon certn messes, bldgs & land ptly of freehd & ptly of leasehd tenure, the parlars whof appear from the recitals next hinafter contd, & the sd ptnp was also entled to certn fixed & movable machy, plant & effects employed in or for the pposes of the sd business & to certn trade-marks the registered nos. whof are ——: *Recitals as to title to freehds & leaseholds;* AND WHAS the Co was formed & registered as a Co limd by shares in the month of —— for the ppose (among other things) of acquirg & carrying on & workg the sd business; AND WHAS the sd A. with the concurrce of the sd B. & C. as exs & trees of the will of the sd X. lately agrd with the Co for the sale to them of the sd business & the goodwill & connon thof as from the 1st day of January, 18—, & the sd freehd & leasehd ppties & fixed & movable machy & plant & trade-marks, & the stk-in-trade, book debts & effects of the sd business as the same stood on the 1st day of January, 18—, subjt to the debts & liabilities of the sd business as the same stood at the same date, for the sum of £——, being the estimated value thof, as appearg from the balce-sheet of the sd business made up to the —— day of ——: AND WHAS it was agrd that for the ppose of these psnts & the *ad valorem* stamp duty payable in respt of the convce

Recitals.

Business carried on.

Title to business premises and assets.

Formation of company.

Agreement for sale.

Apportionment of purchase-

(*a*) As to trade-marks, see p. 365, note.

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& assnmt hby made or wch may be payable in respt of any further convce or transfer to be made for effectuatg the sale of the sd business & premes, the sd total pchase-moy & conson for the sd sale shl be apportioned as follows (that is to say), the sum of £——, being the estimated value of the sd freehd & leasehd ppties & such pt of the sd machy & plant as is affixed to the freehd thof resply, & is not capable of passg by delivery, shl be taken & treated as the value of such freehd & leasehd ppties & fixed machy & plant, the sum of £—— shl be treated as the value of the sd trade-marks, & the sum of £——, being the residue of the sd sum of £——, togr with the adoption & paymt by the Co of the debts & liabilities of the sd business, shl be taken & treated as the conson for the transfer to the Co of the goodwill & all the remaing assets of the sd business ; [AND WHAS it has been agrd that such covts & agrmts shl be made & entd into in relon to the premes as are hinafter expd :] NOW THIS INDRE WITNETH that in psuance, &c., *conson*, &c., *the*

money for stamp duty (*b*).

Agreement as to covenants.

Witnesseth.

(*b*) If there is a preliminary contract the *ad valorem* duty is now chargeable on the contract *quoad* the goodwill, though not as to the land, which must be conveyed by deed, and the price of the chattels passing by delivery is not chargeable (see the Stamp Act, 1891, s. 59, and above, p. 640, note) ; but the recital as to the apportionment of the purchase-money is not inappropriate in that case, since if the goodwill is assigned by deed, the *ad valorem* stamp on the contract may, by the last-mentioned enactment, be transferred to the conveyance. A separate consideration should be stated for the trade-marks, as there must be a registered stamped assignment. If there is no preliminary contract, and it is desired to save the stamp duty on the value of the goodwill, it may be better to omit the recital of the contract, lest it should be held to amount to a contract ; a simple receipt (without more) being taken for the value of the goodwill and chattels ; and a recital being substituted that "As pt of an arrangemt for the sale to the Co of the sd business & the assets thof, the sd A., &c., has agrd with the Co for the sale to them of the sd freehd & leasehd ppties & fixed machy & plant for the sum of £——, being the estimated value, &c." Any covenants between the parties connected with the sale of the goodwill, &c., may be contained in the same, or perhaps better in a separate deed.

As to form of conveyance.

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apportioned conson for the freehds & leasehds & fixed machy & plant (the rect, &c.), the sd A. conveyg **as benefl owner,** in respt of his benefl este & intt in the sd freehd premes hby assured & conveying **as tree** in respt of the legal este in certn portions thof wch is vested in him as hinbfe appears, doth

Grant.

hby grt & assn, & the sd B. & C., **as trees** as well in respt of the benefl este & intt in the same premes wch is vested in them as exs or devisees in trust of the will of the sd X. as in respt of the legal este in certn portions thof wch is vested in them as such exs or devisees in trust do resply hby grt & assn unto the Co *Freehd & leasehd pcels*, p. 415, & all other if any the hds of freehd or leasehd tenure situate in —— afsd, belonging to or used for the pposes of the sd business, TOGR with all machy, erections, fixtures & plant, affixed to the freehd of the same respive freehd & leasehd premes hby grted & assned resply & not capable of passing by delivery, & wch are the ppty of the sd respive pties hto of the first & second pts or any of them, *Habendum to the Co as to the freehds in fee & as to the leasehds in fee for the residue of the term or terms & subjt to rents & covts of leases*, p. 432, *et seq.; Covt by the Co with A. & also separately with B. & C. for paymt of rents & pformce of covts of leases*, p. 461. IN WITS, &c.

LXXVI.

PREC. LXXVI.

TRANSFER *by* ENDORSEMENT *of* CONTRACT *for* PURCHASE *of real estate* PENDING INVESTIGATION *of title at an increased price.*

MEMDUM OF AGRMT made the —— day of ——. Betn A., of, &c., of the one pt & B., of, &c. (hinafter called

Recitals.

the pchaser), of the other pt. WHAS since the date of the within written agrmt the abstract of title to the within

mentd ppty has been delivered to Messrs. ——, the solors of the sd A., who have taken the opinion of counsel upon the title & forwarded requons thron to Messrs. ——, the solors for the within named vendors.

Now it is hby agrd as follows—

Transfer. 1. In conson of the paymt by the pchaser to the sd A. of the sum of £——, *the increase in the price* (the rect, &c.), the sd A. hby assns to the pchasers all the equitable este & intt of the sd A. in the within mentd ppty by virtue of the within written agrmt togr with the benefit of the sd agrmt, & togr also with all his rt, title & intt to & in the within mentd deposit moy of £——.

Costs. 2. On the exon of these psnts the pchaser shl also pay to the sd A. (1) The within mentd deposit moy of £——, (2) The chges of Messrs. ——, *land agents*, who acted for the sd A. in the mre of the pchase amtg to the sum of £——, & (3) The legal costs & expses incurred by the sd A. to his sd solors in the mre of the sd pchase [wch are agrd up to the psnt time at the sum of £——, includg the costs of these psnts], & any further costs wch the sd A. or his reprives may incur or be put to in carrying out the pchase, & enablg the pchaser to complete the same or orwise arisg out of these psnts.

Abstract, &c. 3. The sd A. will at the same time hand to the solors of the pchaser the abstract of title, draft, requons, and opinion of counsel, now in posson of the sd A., & also a copy of the correspce wch has taken place betn the sd Messrs. —— & the within mentd solors of the vendors.

Convey-ance. 4. The sd A., or in the event of his death, his repves will & shl, if required by the pchaser, & at his expse, join in the convces or assurces of the ppty to him, but witht enterg into any covt (express or implied) except the usual trees' covt agst incumbces, & will & shl at the like expse exte & do any instrumts & acts wch may reasbly be required for enablg the pchaser to complete the sd pchase & obtain the full benefit of this agrmt.

Indemnity. 5. The pchasers will pform & carry out the within written

PREC. LXXVI.

agrmt accdg to the tenor thof, or if they should make default in so doing, or shd rtfully refuse to carry out the same, they will indemnify the sd A. agst all actions, claims, demands, & expses, wch he may incur or sustain by reason of his having entered into the sd agrmt. As WITS the hands of the sd pties.

LXXVII.

PREC. LXXVII.

ASSIGNMENT *of* BOND *debt.*

Recitals. That debt is owing.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *Recite bond to secure paymt of* £—— *& intt to A.*, p. 397; AND WHAS the sd ppal sum of £——, togr with intt thron as from the —— day of —— now last past remains due to the sd A. on the

Agreement.

secy of the sd bond; AND WHAS the sd A. has agrd with the sd B. to sell to him for the sum of £—— the sd bond & the sd ppal sum of £——, & the intt now due & all intt henceforth to become due on the same: NOW THIS

Witnesseth.

INDRE WITNETH, *conson* (the rect, &c.), the sd A. as benefl owner doth hby assn unto the sd B., ALL THAT, *bond debt*, see p. 424 (*a*), TO HOLD the same UNTO the sd B., his exs, ads, & assns absolutely. IN WITS, &c.

Assignment of bond.

Habendum.

LXXVIII.

PREC. LXXVIII.

ASSIGNMENT *of a* POLICY *of* LIFE ASSURANCE.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2: WITNETH that in conson of the sum of £——, now pd by the sd B. to the

(*a*) As to the omission of the power of attorney, see p. 124, note. Notice of the assignment must be given to the debtor.

sd A. for the pchase of the policy & moys hby assned (the rect, &c.), the sd A. as benefl owner doth hby assn unto the sd B., *pcels*, p. 423, To HOLD the same UNTO the sd B., his exs, ads, & assns absolutely; [*Covts by A. with B. not to vitiate policy, to pay increased premiums if required, & to give certn notices*, p. 466] (*b*). IN WITS, &c. PREC. LXXVIII. Assignment.

LXXIX.

ASSIGNMENT *of* LEGACY CHARGED *on* REAL ESTATE *on the* PURCHASE *thereof by the* TENANT *for* LIFE, *so as to* KEEP *the* CHARGE ALIVE *for his benefit*, ONE *of the* LEGATEES *being a* MARRIED WOMAN (*c*). PREC. LXXIX.

PARTIES, A. "& B., his wife, formerly C., spinster," & D., *legatees*, 1; E., *tenant for life*, 2. *Recital of will chging real este with legacy of £—— & intt to be raised by sale or mtge, & subjt thto, devisg este to E. for life with remrs over; Death of testor & probate*, p. 402; *& showing that the legacy had become raisable, & was vested in B. & D. in eql shares: Paymt of legacy or succon duty* (*d*); AND WHAS all intt wch Recitals. Interest paid.

(*b*) The insertion of these covenants depends on the arrangements between the parts. In practice, the two first of such covenants, or some modification thereof, are generally inserted. A written notice of the assignment must be given to the Assurance Company, at their principal place of business, pursuant to the "Policies of Assurance Act, 1867," 30 & 31 Vict. c. 144. As to the necessity for stamping the assignment, see the Stamp Act, 1891, s. 118, which makes it expedient to stamp the deed immediately; see 33 Sol. J. 3. Stamps.

(*c*) If the married woman was married or her title accrued since 1882 (as to which see p. 539, note), the concurrence of her husband and her acknowledgment of the deed will be unnecessary; otherwise it must be acknowledged, see *Franks* v. *Bollans*, 3 Ch. 717; *Michelmore* v. *Mudge*, 2 Gif. 183; *Williams* v. *Cooke*, 4 Gif. 343, distinguished in *Re Newton*, 23 Ch. D. 181. In any case her implied covenants bind her separate estate which she has power to bind, see p. 542, note.

(*d*) If the testator died before 1st July, 1888, legacy duty will be pay-

PREC. LXXIX. Contract.

has accrued due upon the sd legacy of £—— up to the date of these psnts has been pd & satisfied; AND WHAS the sd pties hto of the first pt are desirous of havg the sd legacy raised for their benefit accdg to the provons of the sd will, & the sd E. has agrd with them for the pchase of the sd legacy, & of the intt henceforth to become due thron, for the sum of £——, to the intent that the sd legacy may become pt of his psonal este, & exist as a distinct chge on the sd hds chged thwith: NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in consn of the sum of £——, now pd by the sd E. to the sd A. & B., his wife, & of the like sum of £—— pd by the sd E. to the sd D. (the rect, &c.), the sd A. & B. as benefl owners of one moiety of the ppty hby assned do resply hby assn, & the sd D. as benefl owner of the other moiety thof, doth hby assn unto the sd E., ALL THAT the sd legacy or sum of £—— by the sd will of the sd —— chged on the sd este & hds situate at, &c., as afsd, & all intt henceforth to become due for the same, & the full benefit of the sd trust for the raisg & paymt thof, & of all powers & remedies for the recovery thof; TO HOLD the same UNTO the sd E., his exs, ads, & assns absolutely; AND the sd E. doth hby declare that the sd legacy or sum of £—— shl not merge in the freehd or inhance of the sd hds charged thwith as afsd, but shl exist separately as pt of the psonal este of the sd E., for the benefit of him, his exs, ads, & assns. IN WITS, &c. (*a*).

Witnesseth.

Assignment.

Parcels.

Habendum.

Declaration that legacy shall not merge.

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able; if on or after that day, succession duty; see the Customs, &c., Act, 1888, 51 & 52 Vict. c. 8, s. 21 (2). "Estate duty" may also be chargeable under the Customs, &c., Act, 1889, 52 Vict. c. 7, s. 6.

(*a*) Notice should be given to the trustees of the will.

LXXX.

ASSIGNMENT *of the* CONTINGENT REVERSION *of a Stock* LEGACY *to a Purchaser* (*b*). COVENANTS *as to* ASSURANCE *on Vendor's* LIFE, *and by* PURCHASER *to pay* LEGACY *or* SUCCESSION DUTY. VARIATIONS *where the* FUND *is in* COURT. PREC. LXXX.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. WHAS under the will of X., deced, dated, &c., & proved, &c., the sd A. is entled, contingently on his survivg M., of, &c., & subjt to the life intt of the sd M. thrin, to the sum of £—— £2 15*s.* p.c. Consold Stk, now standg in the names of P. & Q., the trees of the sd will, wch has been appropriated to answer a legacy of £—— thby bequed [*if the fund is in ct say*, "now standg in the name of the Paymaster-Genl of the Chancery Divon to the credit of, *state the acct*, representg a legacy," &c.] (*c*); AND WHAS the sd B. has contracted with the sd A. for the absolute pchase of the revon of the sd sum of £—— Stk to wch the sd A. is entled, subjt to the life intt of the sd M. thrin, & contingently on his survivg her as afsd, & subjt to the legacy (*d*) [succon] duty wch will become payable thron in that event, for the sum of £——; AND WHAS upon the treaty for the sd pchase it was agrd that these psnts shd contn such covts & provons as are hinafter expd: NOW THIS INDRE WITNETH that in psuance of the sd agrmt, *conson*, (the rect, &c.), the sd A., as benefl owner

Recitals. Title. Contract. Witnesseth.

(*b*) As to sales of reversions, see p. 561, note.

(*c*) If there has been a previous assignment, and a stop order has been obtained, as to which see Seton on Decrees, 420; 2 Dav. Prec., pt. 2, p. 578, add, "AND WHAS by an order made in the sd action *or* 'mre,' on the applon of —— on the —— day of ——, it was ordered that no pt of the sd sum of £—— stk shd be sold, transferred or dealt with witht notice to the sd ——."

(*d*) If the legacy was charged on land it will be subject to legacy or succession duty according to circumstances, and possibly also to "estate duty:" see p. 649, note (*d*).

PREC. LXXX.

Assignment. Parcels.

doth hby assn unto the sd B., ALL THAT the sd sum of £—— Stk, to wch under the sd will of the sd Y. the sd A. is entled in revon expectant upon the dece of the sd M., & contingently on his survivg her, as hinbfe mentd; AND ALL & every the stk, funds, & secs, moys & ppty wch by means of any sale or change of investmt or orwise may from time to time represent the sd sum of £—— Stk, or any pt thof; AND ALL the divds, intt & income of the sd premes subjt to the life intt of the sd M. thrin, & the full benefit of the sd respive premes, & of all powers & remedies for the recovery & obtaing paymt & transfer thof; TO HOLD the same UNTO the sd B., his exs, ads, & assns absolutely, SUBJT to the legacy [succon] duty to become payable upon the dece of the sd M. in respt of the sd revy intt of the sd A. in the event of his survivg her; *Covts by A. with B.*, that the sd A., his exs, or ads will as often as the sd M. shl remove or change her place of abode, or in case of the death of the sd M., forthwith give notice thof in writg to the sd B., his exs, ads, or assns: *to enable B. to assure A.'s life*, p. 465: *to give certn notices*, p. 466: *If the fund is in ct, add*, AND THE sd A. doth hby empower the sd B., his exs, ads, or assns, at his or their own cost, to apply for & obtain an order in the sd cause, *or*, (mre), [dischging the recited order of the —— day of ——, *the existg stop order, if any*, & in lieu thof to apply for & obtain an order] that no pt of the sd sum of £—— Stk shl be sold, transferred, or dealt with witht notice to the sd B., & upon such applon to use the name of the sd A. as concurrg in or consentg to the same: *Covt by B. to pay legacy* [*succon*] *duty*, p. 464. IN WITS, &c.

Habendum.

Subject to legacy duty.

Covenants by A. to give notice of death, &c., of M.

Power to obtain stop order.

LXXXI.

DEED *of Statutory* ACKNOWLEDGMENT *by a* VENDOR *for* PRODUCTION *of* DEEDS *and* MUNIMENTS *of* TITLE *to a* PURCHASER. VARIATIONS *for several* VENDORS *and for* TRUSTEES *or* MORTGAGEES (*a*). PREC. LXXXI.

PARTIES, Vendor or Vendors, 1; *Pchaser or pchasers,* 2. WHAS by an indre bearing even date with & exted bfe these psnts, & expd to be made betn, &c., in psuance of an agrmt for sale thrin mentd, certn —— & hds situate in the parish of —— & coy of ——, have been conveyed to the use of the sd, *pchaser or pchasers, in fee simple* [unto the sd, *pchaser or pchasers,* for the residue of a term of —— yrs created by an indre of lease dated, &c., & expd to be made, &c.]; *Recital introductory to covt for prodon,* p. 411; NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the premes, *statutory acknowemt & undertakg,* p. 459, *form* III.; [*for trees, or mtgees, statutory acknowemt omittg or qualifying the undertakg*]. IN WITS, &c. Recitals. Witnesseth.

[*Schdle.*]

(*a*) See p. 454, note (*a*). The covenant for production was often taken by a separate deed, especially where it comprised documents which it might be desirable to keep off the title. But as requisitions as to documents prior to the commencement of the title are now precluded in almost every case by the contract or the Conv. Act, 1881, s. 3 (3), there is seldom any advantage in taking the covenant by a separate instrument, except where it is to be entered into by third parties who cannot be made parties to the conveyance without extra expense; or where the insertion of the covenant in the conveyance would delay the completion of the sale, *e.g.*, where the deeds are delivered to the purchaser of another lot who is to give the covenant; or where the deeds may soon cease to affect the title, *e.g.*, where the vendor is a tenant for life, and the deeds relate to incumbrances on his life estate. The statutory acknowledgment and undertaking may be by writing not under seal, requiring only a 6*d.* agreement stamp, see p. 454, note, and Precedent LXXXIII., *infra*. As to taking covenant for production by a separate deed.

LXXXII.

PREC. LXXXII.

STATUTORY ACKNOWLEDGMENT *for* PRODUCTION, *where there are* SEVERAL SETS *of* COVENANTING PARTIES, *some of whom are* TRUSTEES.

Recitals.

PARTIES, A., *one covtg pty*, 1; B. & C., *trees, other covtg pties*, 2; D., *pchaser*, 3. *Recite convce of even date to* D., *see last precedent; Recital introductory to covt, p.* 411;

Witnesseth.

NOW THIS INDRE WITNETH that, in psuance of the sd agrmt & in consn of the premes, &c., *statutory acknowemt & undertakg by A. as to docts in first schdle, & acknowemt* [*& undertakg*] *by B. & C. as to docts in second schdle, see* p. 460, *form* IV. IN WITS, &c.

[*Two Schdles.*]

LXXXIII.

PREC. LXXXIII.

MEMORANDUM *not under* SEAL *of* ACKNOWLEDGMENT *for production.*

I, A., of, &c., having by an indre dated, &c., conveyed to B., of, &c., certn hds situate at, &c., do hby acknowe the rt of the sd B. to the prodon & delivery of copies of the docts mentd in the schdle hto (wch are now in my posson & relate as well to the hds conveyed to the sd B. as afsd as to other hds belonging to me) & hby undertake with the sd B. for the safe custody of the same docts. Dated this —— day of ——.

[*Schdle.*]

LXXXIV.

COVENANT *by* PURCHASER *to* PRODUCE DEEDS *to* VENDOR, *and* INDEMNIFY *him against* LIABILITY *under* COVENANTS *for production entered into by his* TESTATOR (*a*). PREC. LXXXIV.

PARTIES, A., *pchaser*, 1; B., *vendor*, 2. *Recite convce of even date by B. to A.* "of certn hds, &c., wch formed pt of the trust este vested in the sd B. as the tree of the will of C. of, &c., deced," *see Precedent* LXXXI.; AND WHAS the deeds & munimts specified in the schdle hto, wch relate to the hds comprd in the hinbfe recited indre, & wch were in the posson of the sd B. as tree or exor of the will of the sd C., have been delivered by the sd B. to the sd A. as he doth acknowe; AND WHAS the sd B., as tree or exor of the sd C. may be under liability in respt of divers deeds of covt entd into by the sd C. for the prodon & furnishg copies of, or orwise in relon to the sd deeds & munimts or some of them, & the sd A. has agrd to enter into such covt as is hinafter contd for indemnifyg the sd B. in respt of such liabilities; AND WHAS the deeds & munimts specified in the first pt of the schdle hto relate as well to the hds assured by the hinbfe recited indre as to other hds formg pt of the trust este under the sd will of the sd C., & the sd A. has agrd to give such acknowemt & undertakg [covt] as to the prodon & safe custody thof as is hinafter contd: NOW THIS INDRE WITNETH that, in psuance of the sd agrmt in this behalf & in conson of the premes, the sd A. doth hby for himself, his hrs, exs, ads, & assns, covt with the sd B., his hrs, exs, ads, & assns, that he the sd A., his hrs, exs, ads, or assns, will at all times duly observe & pform all the covts at any time entd into by the sd C. with any pson or psons for the prodon & furnishg copies of, or orwise in relon to, any of

Recitals.

Conveyance.

Deeds delivered to purchaser.

Vendor liable under covenants to produce.

Certain deeds relate to other property of vendor.

Witnesseth.

Covenant to indemnify.

(*a*) See p. 454, note.

PREC. LXXXIV.

the deeds & munimts specified in the sd schdle hto, & will indemnify & keep indemnified the sd B., his hrs, exs, & ads, & the este of the sd testor from all pcdgs, claims, demands, costs, damages, expses, & liability whatsr, by reason or in respt of any such covts: *Acknowemt & undertakg by A. as to prodon to B. of the munimts in first pt of schdle*, p. 459. IN WITS, &c.

[*Schdle in two pts.*]

LXXXV.

PREC. LXXXV.

SUBSTITUTED *deed of* COVENANT *for Production.*

Recitals.

PARTIES, A., B., & C., 1; D., 2.; E., 3. WHAS by an indre dated, &c., & expd to be made betn the sd D. of the one pt & the sd E. of the other pt, for the consons thrin mentd, a certn messe or tenemt & hds situate at —— in the coy of —— were conveyed by the sd D. to the sd E., his hrs & assns: AND WHAS by the sd indre the sd D. covted with the sd E. to pduce & furnish copies of a certn deed of convce, dated, &c., & expd, &c., in support of the title of the sd E.: AND WHAS the sd D. has recently sold the remaing portion of the hds & premes comprd in the sd deed of convce of, &c., to the sd A, B., & C., & the same deed of convce has been delivered over to the sd A., B., & C., upon the terms of their givg such acknmt & undertakg as is hinafter contd to the sd E., in substiton for & in exoneron of the liability existg under the sd covt of the sd D. contd in the hinbfe recited indre for the prodon & furnishg copies & safe custody of the sd deed of convce: NOW THIS INDRE WITNETH that in conson of the premes, *acknowemt & undertakg by A., B., & C. to E.*, p. 459: AND THIS INDRE ALSO WITNETH that, in conson of the premes, the sd E. doth hby rele the sd D., his hrs, exs, & ads, from

Conveyance.

Covenant by vendor to produce.

Sale of remaining property, and agreement for substituted covenant.

Witnesseth.

Further witnesseth release of vendor.

the sd covt contd in the sd indre of, &c., & from all liability thrunder, so far as relates to the sd deed of convce wch has been delivered to the sd A., B., & C., as afsd, but not further or orwise. IN WITS, &c. (*a*).

(*a*) Such a deed as this would be unnecessary where the former covenants were in the form of the statutory acknowledgment and undertaking instead of the old form of express covenant, as the liability under the statutory form ceases *ipso facto* on the deeds being parted with; see p. 454, note.

COVENANTS, FORMAL PARTS OF.

Covenant by one with one.

I. THE sd A. doth hby [for himself, his hrs, exs, ads, & assns (*a*)], covt with the sd B. [his, *if relatg to real este*, hrs & assns, *or if relatg to leasehds or psonalty*, exs, ads, & assns, (*b*)] that, &c.

Covenant by two jointly and severally (*c*).

II. THE sd A. & B. do hby [for themselves & their respive hrs, exs, ads, & assns (*a*)], & as a septe covt, each of them doth hby [for himself, his hrs, exs, ads, & assns (*a*)] covt with, &c.

Covenant by more than two jointly and severally (*c*).

III. THE sd A., B., C., & D., do hby [for themselves & their respive hrs, exs, ads, & assns (*a*)], jtly, & every three & two of them do hby [for themselves & their respive hrs, exs, ads, & assns (*a*)], jtly, & every one of them doth hby [for himself, his hrs, exs, ads, & assns (*a*)], separately covt with, &c.

The same. Short form.

IV. THE sd A., B., C., & D., do hby [for themselves resply, & their respive hrs, exs, ads, & assns (*a*)], jtly & sevlly covt with, &c.

Covenant by several where each covenants for his own acts only.

V. EACH of them, the sd A., B., & C., doth hby so far as relates to the acts & defaults of himself & his own hrs, exs, & ads only, & not further or orwise, covt with, &c.

(*a*) The words in this bracket will be inserted if the burden of the covenant is intended to bind real or personal estate, or the title-deeds thereof, in the hands of the assigns of the covenantor; otherwise they may be entirely omitted. See p. 2, note.

(*b*) As to the omission of the words in this bracket, see p. 2, note.

(*c*) Form IV. would probably suffice in all cases in place of this. See R. S. C., 1883, Order XVI., rules 4 and 6. As to what amounts to a joint and what to a several covenant, see *White* v. *Tyndall*, 13 App. Ca. 263; and see Platt on Covenants; Elph. N. & C. Interp. Deeds, p. 434.

VI. EACH of them the sd A. & B. doth hby, &c., & as to the sd B. to the intent to chge & bind the sd —— & premes, *or*, "the share & intt," *or*, "the este & intt for her life in the sd —— & premes," to wch she is entled, or wch she has power to appt or dispose of, as afsd, covt with, &c. Covenant by married woman to bind a specified part of her separate estate (*d*).

VII. THE sd A. doth hby, &c., to the intent to chge & bind her separate este, *or*, "all the real & psonal este to wch she is now or may hrafter become entled for her separate use, or wch she has or may hrafter have power to appt, chge, or dispose of for any este or intt, or in any mner whatever," covt, &c. Covenant by married woman to bind her separate estate generally (*d*)

VIII. THE sd A. & Co do hby for themselves & the sevl ptners in their firm, jtly & sevlly covt with, &c. Covenant by a firm.

IX. THE sd A. doth hby, &c. covt with the sd B. & C. [their hrs, *or*, "exs, ads," & assns (*e*)], & also as a septe covt with each of them [his hrs, *or*, "exs, ads," & assns (*e*)], that, &c. Covenant with two jointly and severally.

X. THE sd A. doth hby, &c., covt with the sd B., C., D., & E., & also septely with every three & two of them [their hrs, *or*, "exs, ads," & assns (*e*)], & also septely with every one of them, [his hrs, *or*, "exs, ads," & assns (*e*), that, &c. Covenant with three or more jointly and severally.

XI. THE sd A. doth hby, &c., covt with the sd B., C., D., & E., & every of them, [their & every of their hrs, *or*, "exs, ads," & assns (*e*)], jtly & sevlly, that, &c. The same. Short form.

XII. THE sd A. doth hby, &c., covt with the sd B. & Co, & with the sevl ptners in their firm, jtly & sevlly, that, &c. Covenant with a firm.

XIII. THE sd A., *pty of the one pt*, doth hby [for himself, his hrs, exs, ads, & assns (*f*)], so far as the covts, agrmts & provons hinafter contd are or ought to be pformed or Mutual covenants by two sets of parties.

(*d*) As to the covenants and contracts of married women, see p. 542, note; having regard to the decisions on the Married Women's Property Act, 1882, which are referred to in that note, it is desirable to rely as little as possible on the Act, and to insert express words binding all the separate estate as far as the law will permit.

(*e*) See note (*b*) on last page.

(*f*) See note (*a*), on last page.

observed by him & psons claimg under him, covt with the sd B. & C., *pties of the other pt*, [their & each of their [hrs] exs, ads, & assns (*b*)], jtly & sevlly, & the sd B. & C. do hby [for themselves resply & their respive hrs, exs, ads, & assns (*a*)], jtly & sevlly, so far as the covts, agrmts, & provons hinafter contd are or ought to be pformed or observed by them & psons claimg under them resply, covt with the sd A., [his [hrs] exs, ads, & assns (*b*)], in mner follg (that is to say) :—

The same by more than two sets of parties.

XIV. EACH & every of them the sd pties hto of the 1st, 2nd, & 3rd pts doth hby [for himself, his hrs, exs, ads, & assns (*a*)], so far, &c., *as above*, covt with the other pties hto [& their respive [hrs], exs, ads, & assns (*b*)], jtly & sevlly, & the sd pties hto of the 4th pt do hby [for themselves resply & their respive hrs, exs, ads, & assns (*a*)], jtly & sevlly, so far, &c., covt with the other pties hto & every of them [their & every of their [hrs], exs, ads, & assns (*b*)], jtly & sevlly, in mner follg (that is to say) :—

The same. Short form.

XV. IT is hby mutually covted & agrd by & betn the sd sevl pties hto, as follows :—

Covenant between two companies.

XVI. THE sd —— Co do hby [for themselves & their assns (*a*)] covt with the sd —— Co [& their assns (*b*)].

Joint and several covenants by several to pay a sum of money.

XVII. THE sd A., B., & C. do hby jtly & sevlly covt with the sd D., [his exs, ads, & assns (*b*),] that they the sd A., B., & C., or their respive hrs, exs, or ads, or some or one of them, will on or bfe the —— day of —— pay to the sd D., his exs, ads, or assns, the sum of £——.

(*a*) See note (*a*), p. 658. (*b*) See note (*b*), p. 658.

DECLARATIONS STATUTORY (*c*).

I.

DECLARATION *by* ATTESTING WITNESS *authenticating the Execution of a* POWER OF ATTORNEY *or* DEED *to operate in the* COLONIES *or elsewhere* ABROAD (*d*).

I, L., of, &c., *one of the attestg witses*, do solemnly & sincerely declare that I & also M., of, &c., *the other wits*, were psnt togr on the —— day of —— & did see K., of, &c., the constituent named in the power of atty [pty of the —— pt to the deed] hrunto annexed, bearing date the —— day of —— & marked with the lre A., duly sign, seal, & as his act & deed deliver the sd power of atty [deed], & that the name or signature K. set & subscribed to the sd power of atty [deed] as the name of the pty extg the same is of the pper handwritg of the sd K., & that the name or signature L. set & subscribed to the sd power of atty [deed] as the name of one of the witses attestg the exon thof by the sd K. is the name or signature of me the declarant, & that the name or signature M. set & subscribed to the same power [deed] as the name of the other witses attestg the exon thof by the sd K. is of the pper handwritg of the sd

(*c*) See the Act 5 & 6 Wm. IV. c. 62; the Conv. Act, 1881, s. 68, supplying a short title; and the Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 21, as to the meaning of "Statutory Declaration." As to the stamp, see the Stamp Act, 1891, 1st Schedule, tit. AFFIDAVIT and STATUTORY DECLARATION. As to statutory declarations.

(*d*) See above, p. 211, note.

M. And I make this declon conscientiously believg the same to be true, & by virtue of the provons of the Statutory Declons Act, 1835.

DECLD at the City, *or*, "in the Borough" of ——, this —— day of ——, bfe me [& I certify the same under my hand & the seal of office of mayoralty of the same City, *or*, "Borough" (*a*)]. X., Mayor of ——, *or*, "Notary Public."

II.

VERIFICATION *by a* MAYOR *or* NOTARY PUBLIC *of* DECLARATION *of* ATTESTING WITNESS.

TO ALL TO WHOM THESE PSNTS SHL COME, I, X., Mayor of the City, *or*, "Borough" of ——, *or*, "Notary Public by Royal authority duly admitted & sworn, of ——, in the coy of ——," in psuance of an Act of Parliamt made & passed in the fifth yr of the reign of his late Majesty King George the second, intituled "An Act for the more easy recovery of Debts in his Majesty's Plantations & Colonies in America," & of the Statutory Declons Act, 1835, do hby certify that on the day of the date hrof psonally came & appeared bfe me L., the pson named in the declon hrunto annexed, being a pson well known & of good credit, & by declon wch the sd L. then made bfe me, did solemnly & sincerely declare & testify to be true the sevl mres & things mentd & contd in the sd annexed declon.

5 Geo. II c. 7.

IN FAITH & TESTIMONY whof I, the sd Mayor, *or*, "Notary Public" have caused the seal of office of mayoralty of the City, *or*, "Borough" of —— [my notarial seal of office],

---

(*a*) The form in this bracket is stated to be sometimes used so as to render the verification in Precedent II. unnecessary.

to be hrunto put, & to be affixed to the power of atty [deed] mentd in the sd declon hrunto annexed.

Dated in —— the —— day of ——

X., Mayor of ——, *or*, "Notary Public." (*Seal*).

III.

VERIFICATION *by a* NOTARY PUBLIC *in a* BRITISH DEPENDENCY *of* SIGNATURE *of* MAGISTRATE *or other* OFFICIAL *to* JURAT *of* AFFIDAVIT.

I, ——, Notary Public, by royal authority duly admitted & sworn, residg & practisg in the town of —— in ——, do hby certify & attest that ——, whose name & signature appears set & subscribed to the jurat at the foot of the foregoing affidavit of ——, is the chief magistrate & one of her Majesty's Justices of the Peace in & for the sd town of ——, *or as the case may be*, bfe whom the affidavit was duly sworn. All wch I attest.

——————, Notary Public. } IN FAITH & TESTIMONY whof I, the sd Notary, have hrunto set my hand & affixed my notarial seal of office at —— in —— afsd this —— day of ——.

IV.

DECLARATION *as to* IDENTITY *of* PARCELS.

I, A., of, &c., do solemnly & sincerely declare as follows:—

1. I am —— yrs of age, & have for a period of —— yrs last past resided in the neighbourhood of ——, & have for

upwards of —— yrs past [acted as surveyor & agent to, &] been well acquainted with a freehd & copyhd este known as ——, situate in the parish of —— afsd, a portion whof, comprisg sevl closes of land, &c. [delineated in the plan now pduced & shown to me marked A., & thrin coloured ——, *or*, "descd in the schdle hto"], has been lately contracted to be sold to X., of, &c.

2. I verily believe, & have no doubt, that the sevl closes of land so contracted to be sold to the sd X. are pt of the land wch were comprd in, & conveyed to Y., of, &c., by an indre dated, &c., the descron in wch indre I have carefully read previously to makg this declon.

3. The close or pcel of land nod —— in the plan or tracg hrunto annexed, wch is a true & correct copy of a portion of the map annexed to a certn indre dated, &c., of land in the township of, &c., is the same plot or pcel of land as is descd in the schdle to an indre dated, &c., as follows, &c.

4. During the time I have known the sd este as afsd the sd sevl closes of land so contracted to be sold have been the ppty of or been in the posson of L., M., & N., successively, namely of the sd L., from the yr —— to the yr ——, &c. And such respive psons have, during such respive periods, as I verily believe, [from my knowledge of the ppty & from havg acted as recer of the rents thof, & from an examinon wch I have lately made of the rental books thof & from havg lately gone over the ppty carefully & verified the descron contd in the sd schdle & plan], been in the full, free & undisturbed posson & enjoymt or rect of the rents & profits of such sevl closes of land & premes, with the appurts thof. And I make, &c.

V.

DECLARATION *as to* PEDIGREE.

I, L., of, &c., do solemnly & sincerely declare as follows :—

1. I AM —— yrs of age, & am one of the chn of the late A. of ——, by B. his wife, formerly K., spinster, who, as I have been informed & believe, were married in the parish church of —— on the —— day of ——. The sd A. & B. are the psons of those respive names in the marre certfe pduced & shown to me at the time of makg this declon & marked with the lre ——.

2. I have always understood & believed that the sd A. had three chn & no more by the sd B., namely, two sons, named resply D. & E., & one daur, being myself.

3. THE sd D. was, as I have always understood, born at —— in the kingdom of Italy on the —— day of ——. In the yr 18— he sailed for Australia in the ship —— from Liverpool, since wch time no tidings of him have ever been reced by any of his family, & I verily believe him to be dead, & that he died a bachelor & intestate.

4. I HAVE been informed & believe that the sd E. was born at —— on the —— day of ——. He was married only once, namely, to F., formerly L. spinster, with whom he intermarried on the —— day of —— at the parish church of ——, as I know from havg been psnt at the marre. The sd E. died on the —— day of ——. He is the pson of that name mentd in the three sevl certfes of baptism, marre & burial, now pduced & shown to me, & marked with the lres —, —, & —, resply. The sd F. is still livg & resides at ——

5. THERE was issue of the marre of the sd E. & F. one child only, named G. who was born on the —— day of ——, & died on the —— day of ——, at the age of —— yrs, & witht havg been married. The sd G. is the pson of that

name mentd in the certfes of baptism & burial now pduced & shown to me, & marked with the lres — & — resply.

6. I KNEW & was well acquainted with H., one of the trees of the settlemt made on the marre of the sd E. & F., who resided & died in the month of ——, at ——. The paper writg now pduced & shown to me marked with the lre —— is a certfe of his burial.

7. I DEPOSE to the above facts from my own knowledge or family repute. And I make, &c. (*a*).

(*a*) As to the desirability of a declaration as to pedigree being made by a member of the family, see Hubback on Succession, pt. 3, chap. 10; Taylor on Evidence, 564 *et seq.*

DECLARATIONS OF TRUST (*b*).

I.

DEED *of* DECLARATION *of* TRUST *of* UNDIVIDED SHARES *of purchased* LANDS (*c*).

THIS INDRE, *&c. Pties*, A., *pchaser & tree*, 1; B., *cestui que trust*, 2. *Recite deed of convce in fee to A., referrg shortly to the pcels;* AND WHAS the sum of £—— pt of the sum of £ ——, expd to have been pd by the sd A. for the pchase of the sd hds & premes afsd, was in fact moy belonging to the sd B., & the sd pchase was made by the sd A. as to —— eql undivided —— pts of the sd hds & premes (being such a proportion of the whole of the sd hds & premes as the sd sum of £—— bears to the sd sum of £——), as a tree for & on behalf of the sd B., as the sd A. doth hby admit & declare: NOW THIS INDRE WITNETH that in conson of the premes it is hby agrd & decld betn & by the sd pties hto that the sd A., his hrs & assns, shl stand & be seised of, & entled to ALL THOSE —— eql undivided —— pts or shares of & in all the sd hds & premes comprd in or expd to be conveyed by the hinbfe recited indre, And of & in the appurts thof, UPON TRUST for

Parties. Recitals. Part of purchase-money belongs to *cestui que trust.* Witnesseth. Declaration of trust. Parcels. Upon trust

(*b*) See also SETTLEMENTS. As to the stamp, see the Stamp Act, 1891, 1st Schedule, tit. DECLARATION and SETTLEMENT.

(*c*) A deed, though not essential, is usual in the case of a formal declaration of trust.

for *cestui que trust.* the sd B., his hrs & assns, & to convey, lease, assure & dispose of the same —— eql —— pts or shares & premes in such mner as he or they shl direct. IN WITS, &c.

II.

DECLARATION *of* TRUST *of* LEASEHOLDS *by a* HUSBAND *in favour of his* WIFE, *to be endorsed on the assignment to the* HUSBAND (*a*).

Recitals. THIS INDRE, &c. *Pties*, A., 1; B., wife of the sd A.,

Agreement for declaration of trust on repayment out of wife's separate estate. 2. WHAS the sum of £——, in the within-written indre expd to be pd by the sd A. for the pchase of the hds & premes thby assned to the sd A., was so pd under an arrangemt betn the sd A. & his wife the sd B., that the sd sum of £—— shd be repd to him by his sd wife out of moys belonging to her for her separate use, the intention being that the sd pchase shd be made for the benefit of the sd B. & that upon the sd pchase moy being so repd by her to the sd A., he shd exte such declon of trust of the premes in her favour as

Repayment accordingly. is hinafter contd: AND WHAS the sd sum of £—— has accdly been repd to the sd A. by the sd B. out of her separate moys & este as he doth hby acknowe & declare: NOW

Witnesseth. THIS INDRE WITNETH that in conson of such paymt,

Power of husband to convey to wife. (*a*) A husband can now convey to his wife freehold land or a thing in action, (Conv. Act, 1881, s. 50 (1),) and perhaps also leaseholds, (Married Women's Property Act, 1882, s. 1 (1)); but a declaration of trust may be preferable in the latter case, for the rule that husband and wife are one person in law still exists for some purposes: *Butler* v. *Butler*, 14 Q. B. D. 831; *Re Jupp*, 39 Ch. D. 148; and see Hood & Challis, Conv., &c., Acts, 127. Where the lessor's consent is necessary to the assignment of the lease, this may be an additional reason for effecting the object by declaration of trust. In *Surman* v. *Wharton*, [1891] 1 Q. B. 491, which was a case of a gift of a leasehold by husband to wife before the above Acts, the form of the deed is not stated.

The deed would not, it is thought, be liable to *ad valorem* duty.

& in psuance of such arrangemt as afsd, it is hby agrd & decld that the sd A., his exs, ads, & assns shl stand possed of the sd hds & premes comprd in & assned by the within-written indre for all the term, este, & intt thrin for wch the same premes are held under the within recited indre of lease subjt to the rent, covts, & condons thrin reserved & contd in trust for the sd B., her exs, ads, & assns absolutely as her separate ppty & este, & to be conveyed & disposed of as she or they shl direct. IN WITS, &c.

Declaration of trust for wife absolutely.

III.

DECLARATION *of* TRUST, *by deed poll, of* MORTGAGE DEBT, *where the Mortgage does not disclose the trust* (*b*).

TO ALL TO WHOM THESE PSNTS shl come, A., of &c., B., of &c., & C., of &c., send greetg. *Recite mtge of even date from X. to A., B., & C., on a jt acct:* NOW THESE PSNTS WITS that the sd A., B. & C. do hby declare that the sd sum of £—— mentd in the sd recited indre of even date hwith to be lent by them to the sd X. as afsd was not their own pper moy, but was realised by them by the sale of the sum of £—— —— stk, pt of the sum of £—— like stk, wch was standg in the names of the sd A., B., & C., as trees & exs under the will dated, &c., & proved on, &c., of G. of &c., deced, the sd sum of £——, stk, being pt of the psonal este of the sd G.: AND THE sd A., B., & C., do hby resply declare that they & their exs, ads, & assns, shl stand possed of the sd sum of £——, secd by the sd indre of even date hwith as afsd, & the intt thof & the

Witnesseth. Origin of money. Declaration of trust.

(*b*) A declaration of trust, though usually dispensed with in this case is sometimes desirable.

secs for the same, & all benefit thof, Upon the trusts upon wch the same ought to be held in conseqce of the sum of £—— so lent by them as afsd, havg been pt of the psonal este of the sd G., deced. In wits, &c.

IV.

DECLARATION *of* Trust *of* Money *secured by* Contributory Mortgage *taken in the names of* Trustees *where the money is advanced by the lenders in* Unequal *Shares* (*a*).

Recitals. *Parties*, A. B., & C., *trees*, 1; D., *one lender*, 2; E. & F., *other lenders*, 3. *Recital of mtge for* £3,000 *to A., B., & C. on a jt acct, referrg to the pcels as*, "certn —— & hds situate in the parish of ——, & coy of ——, thrin parlarly

Title to money advanced. descd:" And whas the sum of £3,000 in the hinbfe recited indre stated to have been advced by the sd A., B., & C., was in reality advced as to £1,000, pt thof, by the sd D., & as to £2,000, the other pt thof, by the sd E. & F., out of moys belonging to them as trees of an indre of settlemt, dated,

Agreement. &c.: And whas the sd A., B., & C., have at the reqt of the sd other pties hto agrd to exte such declon of trust as is

Witnesseth. hinafter contd: NOW THIS INDRE WITNETH that in

Declaration of trust. psuance of the sd agrmt, & in conson of the premes, it is hby decld that the sd A., B., & C., their exs, ads, & assns, shl stand possed of the ppal sum of £3,000, secd by the hinbfe recited indre, & the intt thron, In trust as to the sum of £1,000, pt of the sd ppal sum of £3,000, & the intt on such sum of £1,000 for the sd D., his exs, ads, & assns, & as to the sum of £2,000 other pt of the sd ppal sum of £3,000, & the intt on such sum of £2,000, for the sd E. &

(*a*) See Vol. II., Mortgages.

F., their exs, ads, & assns or other the trees or tree for the time being of the sd indre of settlemt: And further, that the sd sums of £1,000 & £2,000, & the intt thron resply shl have no prefce or priority the one over the other, but shl be payable rateably & eqlly out of any moys wch shl be reced or realised by the sd A., B., & C., their exs, ads, or assns, under or by virtue of the sd indre of mtge. In wits, &c.

Sums to be secured rateably.

DEEDS, FORMAL PARTS OF (*a*).

Commencement of indenture of two parts without recitals.

I. This Indre, made the —— day of ——, Betn A. (*b*) of, &c., of the one pt, & B. of, &c., & C., of, &c., of the other pt, Witneth that, &c. [And this Indre also, *or*, Further Witneth, &c.]

The same of several parts with recitals.

II. This Indre, made the —— day of ——, Betn A. of, &c., of the first pt, B. of, &c., of the second pt, & C. of, &c., & D. of, &c., of the third pt. Whas, &c. Now This Indre Witneth that, &c. [And This Indre also, *or*, "Further" Witneth, &c.]

Commencement of deed poll without recitals.

III. Know All Men By These Psnts that I, A. of, &c., [We, A., of, &c., & B. of, &c.], do, &c., *using commonly the first pson throughout.*

The same with recitals.

IV. To All to Whom These Psnts shl come, A., of, &c., sends [A. of, &c., & B. of, &c., send] greetg. Whas, &c. Now These Psnts Wits that, &c., *using more commonly the third pson.*

Endorsed deed (*c*).

V. This Indre, made the —— day of ——, Betn the within-named A. of the one pt, & B. of, &c., of the other pt.

(*a*) As to the form and execution of deeds, see 30 Sol. J. 636, 651, 667.

(*b*) As to the various methods of describing the parties, see Elph. Introd. Conv., pp. 81–85. As to the notarial or other authentication of deeds to be acted on abroad, see Taylor on Evidence; above, p. 211, note and Declarations Statutory.

As to endorsed deeds.

(*c*) The principal deed will be referred to as the "within written" indenture, matters recited in it as "within recited," and persons or matters mentioned in it as "within named" or "mentd," the first time they are mentioned. If the reference is to a prior endorsed deed, the word "above" will be substituted for "within."

VI. THIS INDRE, made the —— day of ——, BETN A. of, &c., of the first pt, B. of, &c., of the second pt, & C. of, &c., of the third pt, supplemental [intd to be read as annexed] to an indre dated, &c., & expd to be made betn, &c., [being a settlemt, &c.] hinafter called the ppal deed, & anor indre dated, &c., & expd, &c., [being a mtge, &c.] hinafter called, &c. Commencement of deed supplemental, or to be read as annexed to a prior instrument (*d*).

VII. THIS INDRE, made, &c., *as in last form*, supplemtal [intd to be read as annexed] to the sevl indres, deeds poll, & instrumts, the parlars & natures whof, togr with the names or designons by wch the same are hinafter refd to, are specified in the schdle hto. The same where the prior instruments are described in a schedule (*d*).

VIII. IN WITS whof the sd pties hto have hrunto set their respive hands & seals the day & yr first above written. Testimonium of an indenture.

IX. IN WITS whof the sd ——, *Co or Corporon*, have caused their common seal to be hrunto affixed, & the sd other pties hto have, &c., *as in precedg form*. The like where a company or corporation is a party.

(*d*) For recitals making a deed supplemental, &c., see p. 402. As to supplemental deeds, see the Conv. Act, 1881, s. 53 ; above, p. 79, note. As to the use of supplemental deeds.

The above enactment has been the means of bringing the plan of making deeds supplemental considerably into use as a means of saving recitals, although it does not of course derive any efficacy from the Act which it would not otherwise possess ; and recourse was occasionally had to it before the Act to save long recitals, where endorsement was impracticable or not convenient. The Act speaks of *deeds* being made supplemental to *deeds*, but a deed or agreement may of course be made supplemental to any previous deed or agreement, or to a will, or to any number of previous instruments. This plan is often more convenient than endorsing the instrument, especially where more than one solicitor is employed in the business ; but where the new deed has to be approved by other solicitors who are not acquainted with the prior instruments, the form of a supplemental deed is generally inconvenient ; and there can be no object in using it unless a material advantage in brevity is thereby attained. The tendency seems to be to overdo the practice. It is generally convenient and makes the new deed more intelligible if the nature of the prior instruments is very shortly stated, and a short designation is given to each, as above. As to the mode of referring to matters or persons mentioned in the previous instruments (which in an endorsed deed would be referred to as "within" mentioned, &c., see last note), it is incorrect to say "above" mentioned, &c., unless the new deed is actually physically annexed ; the proper way is to say "mentioned, *or*, recited, in the principal deed," &c.

The same. Another form.

x. In wits whof the sd pties hto of the first, second, & third pts have hrunto set their respive hands & seals, & the sd ——, *Co or Corporon*, have, &c., the day & yr first above written.

Testimonium of indenture executed by attorney (*b*).

xi. In wits whof, K. of, &c., *atty*, by virtue of a power of atty under the hand & seal of the above-named A. dated the —— day of —— hath hrunto set the hand & seal of the sd A. [*or*, K. of, &c., as atty for the above-named A. by virtue, &c., hath hrunto set his hand & seal (*a*)] the sd other pties, &c.

Testimonium of a deed poll.

xii. In wits whof the sd A. [I the sd A., *or*, we the sd A. & B.] hath [have] hrunto set his [my] hand & seal [our respive hands & seals] the —— day of ——.

The same by a corporation.

xiii. In wits whof the sd ——, *Corporon*, have caused their common seal to be hrunto affixed this —— day of ——.

The same. Short form.

xiv. Given under the common seal of the sd ——, *Corporon*, *or*, "our common seal," this —— day of ——.

Attestation of a deed.

xv. Signed, sealed, & delivered by the within-named (*c*) A., in the presce of

B. of, &c.
C., clerk to Messrs. K. & L., of, &c.,
Solicitors.

Attestation where there are erasures or interlineations.

xvi. Signed, sealed & delivered by the within-named A., the words —— [to —— both inclusive] havg been previously erased in [written on an erasure in] [interlined betn] the tenth & eleventh lines of the first skin, [page]

(*a*) See the Conv. Act, 1881, s. 46.

As to execution by attorney.

(*b*) The testimonium in this case is usually in the ordinary form, which is not incorrect, as the act of the attorney is in law that of the principal. The attorney may sign the name of the principal, adding under the signature, "by power of atty to B. (the atty);" or he may sign "B. as atty for A. by power of atty, dated, &c." See the Conv. Act, 1881, s. 46.

(*c*) For a deed engrossed book-wise, in this and the following forms of attestation clauses, say, "above-named."

& the words —— havg been previously erased in the third line of the second skin [page], in the presce, &c.

XVII. SIGNED, SEALED, & DELIVERED by the within-named B., the erasures & interlineons noticed in the atteston of the exon by the within-named A., havg been previously made, in the presce, &c. Subsequent attestation where the first has noticed erasures.

XVIII. SIGNED by settg his mark, & sealed & delivered by the within-named A., he being unable to write, in the presce, &c. Attestation of execution by marksman.

XIX. SIGNED, SEALED, & DELIVERED by the within-named A., the same havg been first read over to him, he being blind [unable to read the same] *or*, "the purport & effect of the same havg been previously explained by me to him, & he appeared perfectly to understand the same," in the presce, &c. Attestation for party blind or illiterate.

XX. SIGNED, SEALED, & DELIVERED by K., *atty*, as the atty of the within-named A., in the presce, &c. Attestation for deed executed by attorney.

XXI. THE COMMON SEAL of the within-named ——, *Co or Corporon*, was affixed to the within-written indre in the presce of us,

A. & B., [Dirors.
C. Secretary].

Attestation for company or corporation.

XXII. SIGNED, SEALED, & DELIVERED by the respive pties whose names are subscribed in the —— column of this schdle in the presce of the respive psons whose names are subscribed in this column opposite to the names of such respive pties. Attestation where some signatures in schedule.

XXIII. SIGNED, &c., by the within-named ——, on the —— day of —— (he havg attained his majority on the —— day of ——), in the presce of, &c. Attestation for infant coming of age.

XXIV. RECED of the within- [above] named A. the sum of £——, being the conson money within- [above] expd to have been pd by him to me. Dated the —— day of ——.

Wits. Signed B. Receipt endorsed (*d*).

(*d*) This is now seldom required. See the Conv. Act, 1881, s. 54; above, p. 412, note.

DIRECTION AND CONSENT.

Consent to trustees of settlement investing in funds.

I. To A., B., & C., the trees of an indre dated, &c., being the settlemt made on our marre.

We hby consent to your investg the sum of £——, now in your hands as trees of the sd settlemt, in the pchase of £2 15*s.* p. C. Consold Stk. As WITS our hands this —— day of —— .

Signatures of husbd & wife.

Wits.

Request to trustee of will to change investment.

II. To A. & B., the trees of the will of the late ——.

I do hby reqt you to sell the sum of £——— p. C. Stk now stdg in your names as such trees, & representg, *or*, "formg pt of," the share, to the income whof I am entld for life, of the residuary este of the sd testor, & to invest the net proceeds of such sale (after paymt of the expses of the sale & reinvestmt) in the pchase of £—— —— p. c. Deb Stk of the —— Rly Co [or in case such investmt shl, owing to the state of the market, or for any other reason be deemed inexpedient, then in the pchase of, &c., or in any other investmt authorised by the sd will, or by law]. As WITS, &c.

Signature of tenant for life.

Wits.

Direction to trustees to call in mortgage and purchase land

III. To A. & B., the trees of a settlemt, dated, &c., made on our marre.

We do hby reqt you to call in the sum of £—— (formg pt of the funds subjt to the trusts of sd the settlemt

secd upon a mtge of the —— este belonging to Mr. ——, & to invest the same or a sufft portion thof in the pchase of the freehd este or ppty known as, &c., & to invest any surplus of the sd moys wch may remain after completg the sd pchase & paymt of the incidental expses in the pchase of India —— p. c. Stk. As WITS, &c.

Signatures of husbd & wife.

Wits.

IV. To A. & B., the trees of an indre of settlemt, dated, &c. Request to trustees to sell land.

We reqt you to put up for sale by auction the este or ppty known as the —— este formg pt of the ppty subjt to the uses or trusts of the sd settlemt [& we undertake to concur in any assurces to the pchasers]. As WITS, &c.

Signatures of husbd & wife.

Wits.

V. To A. & B., the trees of a settlemt, dated, &c., made on my marre. Request by wife to trustees to call in money secured by covenant of husband.

WHAS the sd settlemt contns a covt by my husbd for paymt to the trees thof of the sum of £——, & intt thron in the meantime as thrn mentd, but with a declon that the trees shd not call in or compel paymt of the sd sum of £—— durg the jt lives of myself & my sd husbd, unless directed so to do by me in writg under my hand: Now I do hby direct you forthwith to call in & compel paymt of the sd sum of £—— togr with any intt wch may be due thron. As WITS, &c.

Signature of wife.

Wits.

VI. To A. & B., trees of an indre, &c.

We do hby give our consent to your raisg the sum of £——, pt of the expectant or presumptive share of our son [daur] D., under the trusts of the above-mentd indre, by the sale of a sufft pt of the sum of £—— —— deb stk of the —— Rly Co, now subjt to the trusts thof & standg in your names, & to your applyg the same in or towards paymt of Consent to trustees advancing a child.

the premium payable to —— for takg the sd D. to learn the trade or business of —— [in or towards providg an outfit for the sd D. on the occasion of her intd marre with ——], psuant to the power of advancemt contd in the sd indre. As WITS, &c.

Signatures of husbd & wife.

Wits.

Deed of direction to trustees of a settlement to advance a daughter on her marriage. Endorsed on the settlement (*a*).

VII. *PARTIES*, A. & B., *husbd & wife*, 1; C. & D., *trees*, 2; E., *daur*, 3; *Recite that* E. *is one of the chn of* A. & B., *& has attned twenty-one; Intd marre of* E. *with* F., *of, &c.* NOW THIS INDRE WITNETH that the sd A. & B. do hby in exercise of the power for this ppose given to them by the within-written indre of settlemt, & of every or any other power enablg them in this behalf, & in contemplon of the sd intd marre, direct & appt that the sd C. & D., or other the trees or tree for the time being of the sd settlemt do & shl, under or in exercise of the power of advcemt thrin contd, forthwith after the sd intd marre shl be solemnised,

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As to mode of making advancement.

(*a*) This form is intended for a case where the daughter is of age, and it is intended to settle the sum advanced for her benefit on her marriage. It is assumed that the advancement clause extends to *vested* shares, and that the object cannot be attained by means of an appointment and release of the life interests of the husband and wife, on account of the wife being restrained from anticipation (see APPOINTMENTS, p. 80). The formality of a deed may be desirable in a case of this nature, but would rarely be necessary. If the settlement contains the usual power to the parents to appoint to the children, and to insert a provision in the appointment for their advancement, a better plan would be for them to make an absolute appointment to the daughter, followed by a direction by them to the trustees, as in the above form, to apply the fund for her advancement; this would go far towards relieving the trustees from responsibility in case of the propriety of the advance being doubtful, *e.g.*, if it is to pay the debts of the appointee; and even if the appointee is a minor, it would be difficult for him afterwards to question it; and in either case the mother, though restrained from anticipation, would probably be barred by the Trustee Act, 1888, s. 6, from doing so. The fund advanced will be subject to succession duty equally with the remainder of the funds on the death of the parents: *Ex parte Sitwell*, 21 Q. B. D. 466; see above, p. 81; and there may be a possibility of its becoming liable to "estate duty" in addition under the Customs, &c., Act, 1889, s. 6, if the whole fund is of sufficient amount.

appropriate for the benefit of the sd E., & for or towards her advcemt, the sum of £—— Bk Stk pt of the funds subjt to the trusts of the sd settlemt [being at the prices of the day the equivalent of one —— pt of such trust funds & being therefore the amt of a moiety of the portion of the sd E. thrunder] & do & shl stand possed of the same sum & the divds & income thof in trust for the sd E., her exs, ads, assns, as her & their absolute ppty: AND THIS INDRE ALSO WITNETH that they the sd C. & D. do consent to the advcemt hinbfe mentd, & do declare that they will forthwith after the sd intd marre appropriate the sd sum of £—— Bank Stk for the ppose of such advcemt, & will stand possed of such sum, & the divds & income thof, IN TRUST for the sd E., her exs, ads, & assns, as her & their absolute ppty; AND the sd E. doth hby reqt & direct that the sd C. & D. or other the trees or tree for the time being of the within written indre, do & shl forthwith after the sd marre sell the sd sum of £—— Bank Stk & pay the moys pduced thby to G., of, &c., & H., of, &c., *the trees of the daur's settlemt*, or the survor of them, to the intent that they or he may stand possed thof in trust for her the sd E., her exs, ads, & assns. IN WITS, &c.

VIII. To Mr.

I hby authorise & reqt you to pay the sum of £——, wch is payable to me under a deed of, &c., being a convce of, &c., *or as the case may be*, & any intt due or to become due in respt thof, to my solor, Mr. —— whose rect shl be an effectual dischge to you for the same.

Request to pay money to solicitor (*b*).

Dated, &c.

(*b*) An express authority of this kind is now seldom needed, having regard to the Conv. Act, 1881, s. 56, and the Trustee Act, 1888, s. 2 (see above, p. 412, note); but may occasionally be required.

FORMS UNDER SETTLED LAND ACTS (*a*).

Direction by tenant for life to trustees to make investment.

IX. To A. & B., the trees of an indre of settlemt, dated, &c., & expd, &c., *or*, "the will of X., deced." I do hby by virtue of the powers vested in me under the Settled Land Acts, 1882 to 1890, as tenant for life in posson under the sd settlemt [will] direct you to invest the [sum of £——, pt of the] capital moys now in your hands as such trees as afsd in the pchase of, &c. Dated, &c.

Signature of tenant for life or limd owner.

Wits.

Direction by tenant for life to trustees to pay purchase-money and costs.

X. *Commencemt as in last form.* I do hby by virtue, &c., direct you to sell out a sufft portion of the sum of £—— £2 15*s.* p.c. consold stk, now invested in your names as trees of the above-mentd settlemt [will], & to apply the pceeds, *or*, "to apply a sufft portion of the capital moy in your hands, subjt to the trusts of the sd settlemt [will]," in paymt of the pchase-moy, amtg to £——, of an este situate, &c., wch I have lately contracted to pchase from X. upon the exon of the convce thof on the —— day of—— next, or such later day as may be appted for the complon of such pchase, And in paymt of the bill of costs [amtg to £——] of my solors, Messrs. —— [& of your solors, Messrs. ——] in relon to such pchase. Dated, &c.

Signature of tenant for life or limd owner.

Wits.

Direction by tenants for life to trustees to pay costs of sales.

XI. *Commencemt as in form* VIII.

We hby by virtue, &c., authorise & reqt you as the trees of the above-mentd settlemt [will], to apply any capital moy in your hands subjt to the trusts thof in or towards paymt of the bill of costs of Messrs. ——, as solors for the mtgees of the sd estes, in respt of sales of portions of the —— estes, & also in paymt of the bill of costs of Messrs. —— as solors for yourselves, the sd trees, & in paymt of the bill of costs

(*a*) See note on the Acts, pp. 501, *et seq.*

of Messrs. ——, as solors for ourselves, the tenants for life of the sd estes, in respt of such sales. Dated, &c.

Signatures of tenants for life or limd owners.

Wits.

Consent by trustees to tenant for life cutting and selling timber (*b*).

XII. To A. tenant for life [limd owner] of the Y. este, under an indre of settlemt, dated, &c., & expd, &c., *or*, "the will of X., deced." We, the trees of the above-mentd settlemt [will], do hby, psuant to the Settled Land Acts, 1882 to 1890, give our consent to your cuttg & sellg the timber wch is ripe & fit for cuttg on the lands descd in the schdle hto [Provd that three-fourths of the net proceeds of the sale are to be pd to us to be applied as capital moy] (*c*). Dated, &c.

[*Short schdle of pcels.*]

Signatures of trees.

Wits.

Consent by trustees to sale or lease of mansion house, &c. (*d*).

XIII. *Commencemt as in last form.* We the trees under the above-mentd settlemt [will] do hby, psuant to the Settled Land Acts, 1882 to 1890, give our consent to your sellg [leasg] the mansion house & lands descd in the schdle hto, or any pt or pts thof, in such mner & subjt to such [parlars] condons & provons & upon such terms as you may think fit, And we hby undertake & agree to sign & exte such deeds or instrumts for further testifying our consent to any such sale [lease] as may be deemed pper. Dated, &c.

[*Short schdle of pcels.*]

Signatures of trees.

Wits.

XIV. To Mr. A., *pchaser.*

Direction by tenant for life to purchaser to pay

I, B., of, &c., tenant for life [limd owner] of the ppty known as ——, comprd in a contract dated, &c., & made betn myself of the one pt & you of the other pt, do hby, by

(*b*) See the Act of 1882, s. 35.

(*c*) See the Act, s. 35 (2).

(*d*) See the Act of 1890, s. 10, and see forms VI. and VII. in the Rules of Court of December, 1882, under the original Act.

money to trustees or into Court.

virtue of the powers vested in me under the Settled Land Acts, 1882 to 1890, direct you to pay the pchase-moy [amtg to £——] payable by you under the sd contract to C., of, &c., & D., of, &c., the trees of an indre of settlemt dated, &c., *or*, "the will of X., deced," [*or*, into Ct, psuant to the order dated, &c., wch has been obtained for that ppose]. Dated, &c.

Signature of tenant for life or other limd owner.

Wits.

Consent by a tenant for life to a sale or lease by the trustees under an express power in the settlement (*a*).

XV. *Commencemt as in form* IX.

I, A., as tenant for life, *or*, "being beneflly entled or intted for my life," under the above-mentd settlemt [will] do hby psuant to the provons of the Settled Land Acts, 1882 to 1890, give my consent to your sellg [leasg] the ppty descd in the schdle hto, &c., *give short parlars of the material terms as to price or rent, &c., & orwise*, & I undertake & agree to sign & exte such deeds or instrumts for further testifying my consent to such sale [lease] at the cost of the trust este as may be deemed pper. Dated, &c.

[*Schdle of pcels.*]

Signature of tenant for life.

Wits.

As to consent of tenant for life to exercise of express powers by trustees.

(*a*) The restrictions in s. 50 of the Act against the assignment by the tenant for life of his statutory powers, and the provision in s. 53 that in exercising such powers he is to have regard to the interests of all parties entitled, must be taken to apply to his power, under s. 56, of consenting to any sale or lease by the trustees under an express power or trust as well as to the other powers of the tenant for life under the Act; so that it is conceived he cannot delegate his power of consenting, or give a general consent, to any future exercise of the express powers of the trustees; and that the consent must be a specific one to each transaction involving an exercise of discretion by the tenant for life. These considerations render it desirable that the tenant for life should give his consent by joining in the conveyance or lease; but this may be sometimes inconvenient, and the consent may have to be given separately, as in this form. The consent might bear even date with and refer to the conveyance or lease, but should not refer to the contract, as this would make the contract part of the title. Where several persons together constitute the tenant for life, the consent of one only is necessary; Settled Land Act, 1884, s. 6 (2).

XVI. *Commencemt as in form* XII. I, A., of &c., as mtgee of your life este under the above-mentd settlemt in the hds hinafter mentd (with other hds) under an indre of mtge, dated, &c., & made, &c., do hby consent to the sale by you under the powers of the Settled Land Acts, 1882 to 1890, of the freehd & inhance of the hds mentd in the schdle hto to X., of, &c., for the sum of £——, upon paymt of the sd pchase-moy to the trees of the sd settlemt, & do agree upon & subjt to such paymt being made at your expse, to do & exte & to procure to be done & exted all such acts & assurces as shl be necy or pper for releasg the sd premes from the ppal moys & intt secd or intd to be secd by the above-mentd mtge & from all claims & demands thrunder, but witht prejudice to the chge to wch I am entled as such mtgee as afsd on your life intt in the sd sum of £—— & the investmts & income thof. Dated, &c. Consent by mortgagee of life estate of tenant for life to sale (*b*).

[*Schdle of pcels.*]

Signature.

Wits.

(*b*) See the Act of 1882, s. 50. Some practitioners prefer to make the mortgagee of the life estate join in the conveyance to release and convey; but this seems unnecessary, as the legal estate would be drawn out of the mortgagee by the statutory conveyance of the tenant for life; and a separate consent is preferable, as it enables the mortgage to be taken off the title on the death of the tenant for life.

DISCLAIMER(a).

I.

DISCLAIMER *by* TRUSTEE *under a* WILL. RESERVATION *of* BENEFICIAL INTEREST.

Recitals.

TO ALL TO WHOM THESE PSNTS shl come, A., of, &c., sends greetg. WHAS X., late of, &c., duly made

As to disclaimers.

(a) See Elph. Introd. Conv., 431. A deed is generally desirable as evidence of the disclaimer of a trusteeship, but is, of course, not necessary. It was at one time supposed that a deed of disclaimer was necessary as to the legal estate in land, but this is exploded; see *Re Gordon, ubi sup.*; *Re Birchall*, 40 Ch. D. 436. In general the office of executor is separable from that of trustee, so that one may be accepted without the other; but the two offices may be so inseparably connected by the will that the renunciation of probate would amount to the disclaimer of the trusteeship, *Re Gordon*, 6 Ch. D. 531, Lewin on Trusts, 212; and conversely the probate of the will would be the acceptance of the trusteeship, *Mucklow* v. *Fuller*, Jac. 198, Lewin, 214. Of course a trustee cannot disclaim a part only of the trusts, *Urch* v. *Walker*, 3 M. & C. 702; but two of several devisees in trust were held not debarred by accepting the trust from disclaiming the legal estate in copyholds in favour of their co-devisee to save a fine on admittance, *Wellesley* v. *Withers*, 4 El. & Bl. 750.

As to married women.

As to disclaimers by married women, see 8 & 9 Vict. c. 106, s. 7. Whether or not the Married Women's Property Act, 1882, applies to property vested in a married woman as trustee (as to which see p. 540, note), a disclaimer by her of real or leasehold property is not affected by that Act, and should in all cases be by deed acknowledged with the husband's concurrence; but on the retirement of a married woman from a trusteeship the trust estate may undoubtedly be vested under the Conv. Act, 1881, s. 32, in the co-trustees by declaration without acknowledgment. As to disclaimer of powers, see the Conv. Act, 1882, s. 6.

For a precedent of a disclaimer, and appointment of new trustees by the same deed, see above, p. 150.

& exted his will dated, &c., & thby devised all his real este, & bequed all his psonal este not thinbfe specifically devised & bequed, to the sd A. & B. of, &c., their hrs, exs, ads, & assns, upon certn trusts thrin mentd, & the sd testor thby appted the sd A. & B. exs of his sd will [& gdians of his infant chn :] *Recite codl altery trusts :* AND WHAS the sd A. declined to act as tree & exor under, or to accept the devises & beqts made to [or the office of gdian vested in] him jtly with the sd B. in trust as afsd, in & by the sd will & codl, & has renounced probate thof: NOW THESE PSNTS WITS that the sd A. doth hby wholly & absolutely renounce & disclaim ALL the real & psonal este, & premes whatsr by the sd will & codl, or eir of them devised & bequed to him the sd A. whether jtly with the sd B. or orwise in trust as afsd, & all real & psonal este wch at the dece of the sd testor was vested in him as a tree or mtgee (*b*), & all trusts, powers, & authorities by the sd will & codl or eir of them reposed or vested in him the sd A., his hrs, exs, ads, or assns, whether jtly with the sd B., his hrs, exs, ads, or assns, or orwise, & the offices of tree & exor [& gdian] under the sd will & codl: [PROVD ALWAYS that nothing hrin contd shl operate as a disclaimer or rele of any benefl intt, whether vested or contingent, to wch the sd A. is now, or he, his hrs, exs, or ads, may or might hrafter become entled under the trusts, powers, or provons of the sd will or codl, or any legacy or beqt thby given to the sd A. for his own benefit]. IN WITS, &c.

Will.

Refusal to act.

Witnesseth.

Disclaimer.

Reservation of beneficial interest (*c*).

(*b*) This disclaimer of trust and mortgage estates is required only as to copyholds to which the testator had been admitted, which, by the Copyhold Act, 1887, s. 45, are excepted out of the Conv. Act, 1881, s. 30; all others would go with the executorship.

(*c*) As to the right of a legatee to accept a beneficial gift and disclaim an onerous one, see 1 Jarman on Wills, 4th ed. 449; *Guthrie* v. *Walrond* 22 Ch, D. 573.

II.

DISCLAIMER *by* INDORSEMENT *of* TRUSTEESHIP *of* DEED.

Recital

TO ALL TO WHOM THESE PSNTS shl come, the within-named A. sends greetg. WHAS the sd A. has never exted the within-written indre, & has never accepted or acted in the trusts thof & is desirous of renouncg & disclaimg such trusts: NOW THESE PSNTS WITS that the sd A. doth hby wholly & absolutely renounce & disclaim ALL & SINGR the real & psonal este, hds, & premes whatsr by the within-written indre expd to be grted & assned to the sd A., his hrs, exs, ads, & assns, jtly with the within-named B. & C., their hrs, exs, ads, & assns, in trust as within-mentd or orwise howsr, & the treeship of the within-written indre, & all trusts, powers, & authorities expd to be thby vested or reposed in, or given to him, the sd A., his hrs, exs, ads, or assns, whether jtly with the sd B. & C., or any other psons or pson, or orwise howsr. IN WITS, &c.

Wit nesseth.

Disclaimer.

DISENTAILING ASSURANCES (*a*).

I.

DISENTAILING DEED *of* FREEHOLDS *by* TENANT *in* TAIL *in* POSSESSION (*b*).

PARTIES, A., *tenant in tail*, 1; B., *grtee to uses*, 2: WHAS under an indre, dated, &c., being the settlemt made in consn of the marre, aftwds solemnised, of X. & Y. resply deced, the late father & mother of the sd A., *or*, "under the will, dated, &c., & a codl thto, dated, &c., & proved, &c., of X., late of, &c., deced," the sd A. is tenant in tail [male] in posson of the hds hby grted, *or recite settlemt or will & codl, subseqt events shewing the title of A.*: AND WHAS the sd A. is desirous of barrg the entail of the sd hds & of all other, if any, hds of wch he is tenant in tail [male or in tail] as hinafter mentd, & of vestg the same in himself in fee simple in posson, in mner hinafter appearg: NOW THIS INDRE WITNETH that the sd A. doth hby grt unto the sd B., ALL & SINGR the freehd messes, farms, lands, tenemts, tithes, tithe rent-chges & hds, situate or

Recitals.

Settlement or will.

Desire to bar.

Witnesseth.

Grant.

(*a*) See 3 Dav. Prec., pt. 2, p. 1284 *et seq.*; and as to the insertion of recitals, see 1 Dart, V. & P., 590; Elph. Introd. Conv. 446.

(*b*) See 3 & 4 Wm. IV. c. 74, ss. 15—21, and ss. 40—49. To be enrolled within six months under s. 41. As to what is a "disposition" within the Act, see *Green* v. *Paterson*, 32 Ch. D. 95. Having regard to *Peacock* v. *Eastland*, 10 Eq. 17, in which a disentailing deed was held to be defeated by the disclaimer of the grantee to uses, it is desirable that the grantee should execute the deed. As to the power of the Court to rectify a disentailing deed, see *Hall Dare* v. *Hall Dare*, 29 Ch. D. 133; 31 Ch. D. 251.

As to disentailing deeds.

Parcels (*b*). arisg (*a*) in the sevl parishes of —— & ——, or elsewhere in the coy of ——, comprd in or assured by the sd indre of settlemt of, &c., *or*, "devised by the sd will & codl of the sd —— deced, or eir of them," or wch are now by any means subjt to the subsistg uses or trusts of the sd indre of settlemt, *or*, "will & codl," & all other (if any) freehd hds of wch the sd A. is now by any means tenant in tail [male or in tail] at law or in equity under or by virtue of the sd indre of settlemt, *or*, "will & codl, or eir of them," or orwise (*c*),

Habendum. To grantee discharged from entail. To HOLD the same UNTO the sd B. & his hrs, dischged from all estes in tail [male or in tail] of the sd A. at law or in equity, & all estes, rts, intts, & powers to take effect after the determinon or in defeasce of such estes in tail [male or in tail],

To use of grantor in fee (*d*). To THE USE of the sd A., his hrs & assns for ever.

IN WITS, &c.

(*a*) The word "arising" has reference to incorporeal hereditaments, such as tithes, rents, and advowsons, to which the word "situate" is not appropriate; see *Crompton* v. *Jarratt*, 30 Ch. D. 298.

(*b*) The parcels in a disentailing deed are usually described by a short general description, which, besides saving expense on enrolment, is for every reason the better course. The following is a mode of describing the parcels where there have been sales, &c., under the powers of the settlement or will, or inclosures, &c.:—

Variation where property altered by sales, &c. "ALL & SINGR, &c., *as above*, save & except such pt or pts of the sd hds & premes as by means of any sale, exchange, parton, enclosure, award, or orwise, have been disposed of or parted with or become extinguished, & also (by way of conveyce & not of exception) all other freehd hds wch by means of any conveyce, assurce, exchange, parton, enclosure, award, allotmt, or orwise, have become subjt to the uses or trusts of the sd indre of settlemt, *or*, 'will & codl,' & other (if any), &c., *as above*."

(*c*) It is often desirable to add words barring the entail in any moneys arising from sales, &c.; see *Mills* v. *Fox*, 37 Ch. D. 153, and Precedents IV. and VII. This might be included in the same operative clause.

As to keeping alive powers of sale, &c. (*d*) Where there are charges of jointures or portions subsisting under the settlement, it may be suggested as deserving of consideration whether it might not be better to limit the property to such uses as the tenant in tail may by deed or will appoint, and in default to the old uses (as in Precedent IV., *mutatis mutandis*), so as to keep alive his estate tail, and

II.

DISENTAILING Deed *of* Freeholds *by* Tenant in Tail *in* Possession. *Short form without recitals.*

Parties, A., *tenant in tail*, 1; B., *grtee to uses*, 2: WITNETH that the sd A. doth hby grt unto the sd B., All & singr the freehd messes, lands, tenemts, & hds situate or arisg in the sevl parishes of —— & —— in the coy of —— or elsewhere, of or to wch he, the sd A., is seised or entled at law or in equity for any este in tail [male or in tail], under an indre, dated, &c., & expd to be made, &c., *or*, "the will, dated, &c., & proved, &c., of X., late of, &c.," or orwise, howsr, To hold the same Unto the sd B. & his hrs dischged, &c., *as in last Precedent*, To the use of the sd A., his hrs & assns for ever. In wits, &c. (*e*).

Witnesseth. Grant. Parcels. Habendum to grantee. To use of grantor in fee.

III.

DISENTAILING Deed *of* Freeholds *by* Tenant *in* Tail, *with* Consent *of* Protector (*f*).

Parties, A., *tenant in tail*, 1; B., *protector*, 2; C., *grtee to uses*, 3. *Recite will or settlemt by wch the estes for life & in tail are limd, down to & includg the limon to A., & subseqt events, showg that A. is tenant in tail & B. protector:* NOW THIS INDRE WITNETH that the sd A., with the consent [hby testified] of the sd B., as protector of the settlemt, doth hby grt unto the sd C., *pcels as in Prece-*

Witnesseth. Grant.

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enable him to override the family charges under the powers of the Settled Land Act, 1882, see s. 58 (1) (*i*); and p. 691, note.

(*e*) To be enrolled under 3 & 4 Wm. IV. c. 74, s. 41.

(*f*) See 3 & 4 Wm. IV. c. 74, s. 34. To be enrolled under s. 41.

Habendum. To grantee subject to estates prior to estate tail. To use of tenant in tail in fee.

dent I., To HOLD the same UNTO the sd C. & his hrs, subjt & witht prejudice to the uses & estes limd or created by the sd will [indre of settlemt], wch are prior to the este in tail of the sd A., & to the powers annexed to such prior estes so far as such uses, estes, & powers are now subsistg, or capable of takg effect, but dischged, &c., *as in Precedent* I., To THE USE of the sd A., his hrs & assns for ever (*a*). IN WITS, &c.

IV.

DISENTAILING DEED *of* FREEHOLDS *and* ENTAILED MONEY *by* TENANT *in* TAIL *with* CONCURRENCE *of* PROTECTOR *limiting the estate to their* JOINT APPOINTMENT (*b*).

Recitals.

PARTIES, A., *tenant for life*, 1; B., *tenant in tail*, 2; C. & D., *trees*, 3. *Recital of settlemt on the marre of A., & subseqt events showg that the este stands limd to the use of A. for life with remr to B. in tail male, subjt to incumbces & to a jture & portions & terms of yrs for securg them, & that a sum of £—— arisg from sales, &c., under the powers of the settlemt or orwise, stands in the names of K. & L. the present trees of the settlemt on trust to be re-invested in the pchase of*

(*a*) If it is intended that the tenant in tail shall not be independent of the tenant for life, the reversion should be limited to their joint appointment, and in default as the tenant in remainder appoints if he survives the tenant for life (not to him in fee), and in default of appointment to the old uses (see the next Precedent). If the entail is barred preparatory to a resettlement, it is best to make the tenant for life convey his life estate, so that the joint power of appointment affects the fee in possession, as in the next Precedent.

(*b*) See Elph. Introd. Conv. 454, and the last note. As to the effect of a disentailing assurance by a tenant for life and remainderman in tail on a shifting clause, see *Doe* v. *Earl of Scarborough*, 3 Ad. & El. 2, 897; 3 Dav. Prec. Pt. I., 398.

land to be settled to the same uses: And whas the sd A. & B. are desirous of barrg the este in tail male & all other estes in tail of the sd B. in the sd hds, moys, & premes, & all estes, intts, & powers to take effect after the determinon, or in defeasce thof, & of assurg & limitg the same in mner hinafter expd: NOW THIS INDRE WITNETH that in psuance of such desire & in conson of the premes, the sd A., & the sd B. with the consent of the sd A. as protector of the sd settlemt, accdg to their respive estes & intts in the premes, do resply hby grt unto the sd C. & D., *pcels as in Precedent* I.: To hold the same Unto the sd C. & D. & their hrs, Subjt to the chges & incumbces hinbfe mentd so far as the same affect the same premes resply, & to the uses & estes limd or created by the sd indre of settlemt wch precede the este in tail male of the sd B. (other than the este thby limd to the sd A. & his assns for his life) & to the powers annexed to or exercisable during the continuce of such precedg uses or estes resply (other than as last afsd), & to the uses & estes limd or created, or to be limd or created, in exercise of such powers, But dischged, *&c., as in Precedent* I.: To such uses, upon such trusts, & subjt to such powers & provons, as the sd A. & B. shl at any time or times hrafter by any deed or deeds, revocable or irrevocable, jtly appt, And in default of & subjt to any such jt apptmt, to the use of the sd A. & his assns during his life witht impeachmt of waste in restoron, continuon, & confirmon of the este for his life limd to him by the hinbfe recited indre of settlemt with the powers annexed to such life este (*c*) with remr, To such

Desire to bar.

Witnesseth.

Grant.

Habendum to grantee, subject to incumbrances.

To such uses as A. and B. appoint.

In default.

To A. for life.

Remainder

(*c*) This restoration of the old life estate will be effectual according to its tenor, so that A. will retain his powers as tenant for life under the *original* settlement (although the life estate is displaced by being postponed to the overriding joint power), both as regards the express powers (see 3 Dav. Prec. 596; *Re Wright*, 28 Ch. D. 93), and also, doubtless, as regards the powers of the Settled Land Acts. This is important, in order that the means of overriding any family charges which may be subsisting under the old settlement may be preserved; and even assuming the doctrine of *Re Ailesbury*, W. N. [1893] 45, as to "compound" settlements, to be good law, it is still necessary, since the doctrine depends on the old life estate being kept alive; see above, p. 502.

As to preserving old life estate.

to such uses as B. appoints.

USES, upon such trusts, & subjt to such powers & provons, as the sd B., in case he shl survive the sd A., shl at any time or times after the death of the sd A., by any deed or deeds, revocable or irrevocable, or by will or codl [in any case exply referrg to this psnt power or the ppty subjt thto (*a*)] appt, AND IN DEFAULT of & subjt to any such apptmt, To THE USES, upon the trusts, & subjt to the powers & provons to, upon, & subjt to wch, under or by virtue of the hinbfe recited indre of settlemt, the same premes resply stood limd & settled immedly bfe the exon of these psnts, or such of the same uses, trusts, powers, & provons as shl be then subsistg or capable of takg effect, & so as to restore & confirm the same uses, trusts, powers, & provons: AND THIS INDRE ALSO WITNETH that in further psuance, &c., & in conson, &c., the sd A., & the

In default.

To original uses.

Further witnesseth.

As to effect of general devise where power required to be referred to.

(*a*) This requirement, the object of which is to prevent a general devise by will from operating contrary to the intention as an exercise the power, was held in *Re Marsh*, 38 Ch. D. 630, to be ineffectual for the purpose, on the ground that the intention of the donor of the power is overridden by s. 27 of the Wills Act, making a general devise or bequest operate as an exercise of all general powers unless an intention to the contrary is expressed or implied on the face of the will itself. But this reason would apply equally to a power of revocation and new appointment, and the case is inconsistent with several cases (*Palmer* v. *Newell*, 20 Beav. 32; *Charles* v. *Burke*, 43 Ch. D. 223, n.; *Re Brace*, [1891] 2 Ch. 671), in which the power was of that nature, and is opposed to several later cases in which the power was substantially similar: *Re Phillips*, 41 Ch. D. 417; *Re Tarrant*, W. N. 1889, 146; and must be taken to be overruled by the decision of the Court of Appeal in *Phillips* v. *Cayley*, 43 Ch. D. 222; and see *Re Davies*, [1892] 3 Ch. 63. The correct view seems to be that in order to decide the question the will must be read in connection with the power, and so reading it the absence of any reference to either the power or the property does show a contrary intention on its face. The case may be compared to that which would have arisen if s. 10 of the Wills Act, dispensing with the necessity for conformity to the power as regards attestation, &c., had been omitted, and the power had required three witnesses; could it in that case have been contended that a will with only two witnesses would by force only of s. 27 have been a valid exercise of the power? The point is important, as restrictive words of this nature have been frequently inserted by conveyancers without any doubt as to their efficacy, and many titles depend on it; see 3 Dav. Prec. 698, 1048, note.

sd B., with the consent of the sd A., &c., *as above*, accdg to their respive intts in the premes, do resply hby grt & assn unto the sd C. & D., ALL that the sum of £——, &c., now standg in the names of the sd K. & L. as afsd, & the hds to be pchased thwith, To HOLD UNTO the sd C. & D., their hrs & assns, subjt to the uses & estes created by the sd indre of settlemt wch precede the este in tail male of the sd B. in the same premes (other than the este of the sd A. durg his life) & to the powers annexed to or exercisable durg the continuce of such precedg uses or estes resply & to the uses & estes created or to be created in exercise of such powers, BUT DISCHGD, *&c., as in Precedent* I.: UPON the like trusts & subjt to the like powers & provons as if the same were capital moy arisg from a sale made after the date of these psnts of pt of the hds comprd in the sd settlemt of, &c., AND it is hby agrd & decld that the sd C. & D. shl be the trees of the settlemt hby made for the pposes of the Settled Land Act, 1882, & any act or acts amendg or extendg the same (*b*). IN WITS, &c. (*c*).

Assignment.

Money.

Habendum to grantee.

Upon trusts of sale moneys.

V.

SURRENDER *out of Court of* COPYHOLDS *by* LEGAL TENANT IN TAIL IN POSSESSION *for barring the entail* (*without recitals*) (*d*). VARIATIONS *where there is a* PROTECTOR *who* CONSENTS, *and for case of* EQUITABLE TENANT *in* TAIL (*e*).

(*b*) This clause should be inserted, as the deed operates as a new settlement.

(*c*) To be enrolled under 3 & 4 Wm. IV. c. 74, s. 41.

(*d*) Where recitals are used they should take the following form:—

WHAS, &c., *recite settlemt or will, &c., admittee & facts showg that A. is* [*equitable*] *tenant in tail* [*& B. protector*].

(*e*) See 3 & 4 Wm. IV. c. 74, ss. 50–54. To be entered on the Court Rolls. As to the bar of the entail of copyholds by enfranchisement, see *Ex parte School Board for London*, 41 Ch. D. 547.

The manor of —— } The —— day of ——.
in the coy of ——. }

Memorandum of surrender.

BE IT REMEMBERED that on the day above mentd, A., *tenant in tail*, of, &c., one of the customary tenants of the sd manor, came bfe me, [deputy] steward of the sd manor, & for the ppose of defeatg & barrg all estes in tail [male or in tail] (*a*) of the sd A. in the hds hinafter mentd, & all estes, rts, intts, & powers to take effect after the determinon or in defeasce of such estes in tail [male or in tail] (*b*) did out of Ct surrender into the hands of the lord of the sd manor by the hands & acceptce of the sd [deputy] steward by the rod accdg to the custom of the sd manor, *pcels, see Precedent* I. p. 687, to wch sd hds & premes the sd A. was admitted at a genl ct held for the sd manor on the —— day of ——, TO HOLD to him, the sd A., & the hrs of his body accdg to a devise of the sd premes contd in the will of L., late of, &c., deced, thrin mentd or refd to, To THE USE of the sd A., his hrs & assns, for ever, accdg to the custom of the sd manor, by & under the rents, fines, heriots, suits, & services due & of rt accustomed for the same.

To use of surrenderor in fee.

Signature of A.

Taken & acknowed the day & yr above written } X., [deputy] steward of the sd manor.

(*a*) In the case of an equitable tenant in tail, add, "in equity or orwise."

(*b*) Where there is a protector who consents, add here, "& with the consent of the sd B. as protector of the settlemt of the sd hds, testified by his signature hrunder written," and at the foot of the surrender the following memorandum of consent :—

Variation for protector consenting.

"I, the above-named B., as protector of the settlemt above mentd, do hby declare my consent to the above surrender : As WITS my hand the day & yr first above written.

"Wits, C. *Signature of B.*"

VI.

DISENTAILING *Deed by* TENANTS *in* COMMON *in tail extending to a possible* ACCRUING *share under cross remainders, one tenant in tail being a* MARRIED WOMAN. VARIATIONS *where her share is limited to her* HUSBAND (*c*).

PARTIES, A. & B., *tenants in tail*, & C., *husbd of* B., 1; X., *protector*, 2; Y., *grtee to uses*, 3. *Recite settlemt of freehds to use of X. for life, with remr, subjt to intermediate estes wch have failed or are not likely to take effect, to the daurs of X. as tenants in common in tail with cross remrs in tail with remrs over: That X. has had three daurs, namely, A. & B. & D., marre of B., death of D. leavg issue:* AND WHAS the pties hto of the first pt, with the concurrce of the sd X. as protector of the settlemt, are desirous of barrg all the estes tail of the sd A. & B. in the hds & premes comprd in or wch are now subjt to the uses of the sd settlemt, includg their estes tail in the share thrin of the sd D. deced, in remr expectant upon the failure of her issue, & all estes to take effect after the determinon or in defeasce of such respive estes tail, & of assurg their respive shares in the same hds & premes, includg the shares to wch they are entled in remr as last afsd in mner hinafter expd [it being the desire of the sd B. that her share thrin shl be limd to & vested in her sd husbd (*d*)]: NOW THIS INDRE

Recitals.

Desire to bar entail.

(*c*) See 3 & 4 Wm. IV. c. 74, s. 40; and as to enrolment, s. 41; and as to married women, s. 77. If either the settlement or the marriage was after 1882, the case would be within the Married Women's Property Act, 1882, and the husband's concurrence and the acknowledgment of the deed by the wife would be unnecessary, *Re Drummond*, [1891] 1 Ch. 524. The acknowledgment (where the case is under the old law) should, of course, precede the enrolment, though it need not: *Ex parte Taverner*, 7 De G. M. & G. 627. If the fee is to be limited to the husband, the grantee to uses may be dispensed with, as by the Conv. Act, 1881, s. 50, a wife may convey freeholds direct to her husband.

Disentailing assurances by married women.

(*d*) It is desirable to recite expressly the intention in this respect.

Witnesseth. WITNETH that the sd respive pties hto of the first pt with the consent (hby testified) of the sd X. as protector of the settlemt (the sd B. actg hrin with the concurrce of her sd husbd) do resply, accdg to their sevl estes & intts in the premes, hby grt unto the sd Y., ALL those the two eql undivided third pts or shares of them the sd A. & B., AND ALSO all that the remaing eql undivided third pt or share to wch they are resply entled in remr expectant on the failure of issue of the sd D. deced as afsd of & in, *pcels, see Precedent* I., AND all other, if any, hds & premes whatsr & wheresr situate, wch are now by any means subjt to the subsistg uses of the sd settlemt, or of wch, or of any undivided share or shares whof the sd A. & B. resply are now by any means tenant in tail at law or in equity, under or by virtue of the sd settlemt, or any convce or assurce to the uses or upon the trusts thof, TO HOLD the same UNTO the sd Y. & his hrs, subjt to the subsistg uses of the sd settlemt wch precede the respive estes tail of the sd A. & B. resply at law or in equity, but dischged from such respive estes tail, & all estes, powers, & intts to take effect after the determinon or in defeasce of such respive estes tail, nevs as to the share or shares of & in the sd hds & premes of wch the sd A. was, previously to the exon of these psnts, tenant in tail TO THE USE OF the sd A., her hrs & assns, for her separate use, AND as to the share or shares of & in the sd hds & premes of wch the sd B. was, previously to such exon, tenant in tail, TO THE USE OF the sd B., her hrs & assns, for her separate use, *or*, "TO THE USE OF the sd C., his hrs & assns." IN WITS, &c.

Grant. Undivided shares.

Habendum.

VII.

DEED *by* TENANT *in* POSSESSION *for barring* ESTATES TAIL *in* FREEHOLDS *and* MONEY, *and* EQUITABLE ESTATES TAIL *in* COPYHOLDS, *and enlarging* BASE FEES *in* FREEHOLDS *and* EQUITABLE BASE FEES *in* COPYHOLDS. VARIATIONS *for* TENANT IN TAIL *in remainder, the consent of the* PROTECTOR *being given by a* SEPARATE DEED (*a*). *A short form without recitals.*

Parties, A., *tenant in tail*, 1; B., *grtee to uses*, 2. WITNETH that the sd A. doth hby grt unto the sd B. ALL & SINGR the hds of freehd tenure whatsr & wheresr situate or arisg, of or to wch he, the sd A., is seised or entled for any este in tail male or in tail [or quasi in tail male or in tail (*b*)], at law or in equity: AND ALSO all & singr the hds of copyhd or customary tenure whatsr & wheresr situate of or to wch he, the sd A., is seised or entled for any este in tail male or in tail [or quasi in tail male or in tail], in equity only: AND ALSO all hds wch are or may be subjt to be sold & the moys arisg from the sale whof are or may be subjt to be invested in the pchase of hds to be settled so that the sd A. wd have thrin any este in tail male or in tail at law or in equity, TO HOLD the same UNTO the sd B. & his hrs (*c*), TO THE USE of & in trust for

Witnesseth. Grant. Entailed parcels.

Habendum to grantee. To use of grantor in fee.

(*a*) See 3 & 4 Will. IV. c. 74, ss. 41—47. To be enrolled under s. 41, and entered on the Court Rolls of the manors under s. 53, within six calendar months after execution: *Honywood* v. *Foster*, 30 Beav. 1; *Gibbons* v. *Snape*, 1 De G. J. & S. 621; *Green* v. *Paterson*, 32 Ch. D. 95. It may be mentioned that a deed disentailing customary freeholds not held by copy does not require entry on the Rolls; see Shelford R. P. Stats., note to 3 & 4 Wm. IV. c. 74, s. 53; as to the enlargement of a base fee by a married woman, see *Re Drummond*, [1891] 1 Ch. 524.

(*b*) As to the bar of quasi-entails in estates *pur autre vie*, see 2 Vaizey on Settlements, p. 1310; and see as to quasi-entails, 1 Steph. Comm., p. 431.

(*c*) If A. is tenant in tail in remainder of the whole or part, insert

the sd A., his hrs & assns, for ever, dischged, &c., *as in Precedent* I., but as to the sd hds of copyhd or customary tenure accdg to the custom of the sevl manors of wch the same are resply holden: AND THIS INDRE ALSO WITNETH that the sd A. doth hby grt unto the sd B. ALL & SINGR (if any) the hds of freehd tenure whatsr & wheresr situate or arisg, in wch an este in tail male, or in tail, at law or in equity (of wch the sd A., if such este had not been barred, wd have been actual tenant), has been barred & converted into a base fee: AND ALSO all & singr (if any) the hds of copyhd or customary tenure whatsr & wheresr situate, in wch an este in tail male or in tail in equity only (of wch the sd A., if such estate had not been barred, wd have been actual tenant), has been barred & converted into a base fee, TO HOLD the same UNTO the sd B., & his hrs, TO THE USE of & in trust for the sd A., his hrs & assns, for ever, so as to enlarge the base fee now vested in him as afsd into a fee simple absolute, but as to the sd hds of copyhd or customary tenure accdg to the custom of the sevl manors of wch the same are resply holden: AND THIS INDRE ALSO WITNETH that the sd A. doth hby grt & assn unto the sd B. ALL THAT the sum of, &c., in the Chancery Divon of the High Ct of Justice, standg to the credit of the cause of X. *v.* Y., *refere to record*, the acct of, &c. (*a*), AND the hds to be pchased thwith: AND ALL other moys, stks, funds, & secs (if any), whether in Ct or not, wch, or the pceeds of the sale of wch are subjt to be invested in the pchase of hds of wch the sd A. wd be tenant in tail male or in tail: And the hds to be

Further witnesseth. Grant. Base fee parcels.

Habendum. To grantee. To use of grantor in fee.

Witnesseth. Grant and assignment of money.

here, and in the corresponding places in the subsequent witnessing parts, "subjt [as to such of the sd premes as are subjt thto] to the uses & trusts wch precede such estes in tail male or in tail resply."

(*a*) As to the necessity for a disentailing deed, where the money is in Court, see 3 Dav. Prec. 1302; *Re Butler's Will*, L. R. 16 Eq. 479; *Re Row*, L. R. 17 Eq. 300; *Re Wood's Settled Estates*, L. R. 20 Eq. 372; *Re Broadwood's Settled Estate*, 1 Ch. D. 438; *Re Reynolds*, 3 Ch. D. 61.

pchased thwith, To HOLD the same UNTO the sd B. & his hrs, dischged, &c., *as in Precedent* I., IN TRUST for the sd A., his exs, ads, & assns, as psonal este (*b*). IN WITS, &c.

Habendum. To grantee. In trust for grantor.

VIII.

PROTECTOR'S CONSENT *to the barring of an estate tail* (*c*).

TO ALL TO WHOM, &c., A., *protector*, of, &c., sends greetg: *Recite settlemt shortly, showg that A. is protector & B. tenant in tail:* NOW THESE PSNTS WITS that the sd A., as protector of the sd settlemt, doth hby give his consent to every or any disposon wch the sd B. shl make of the hds & premes comprd in or wch are now by any means subjt at law or in equity to the subsistg uses or trusts of the sd settlemt or any of such premes or any pt thof. IN WITS, &c.

(*b*) If A. is tenant in tail in remainder, say: "IN TRUST for the sd A., his hrs & assns."

(*c*) See 3 & 4 Will. IV. c. 74, s. 34. To be enrolled in Chancery under s. 46, or for copyholds on the Court Rolls of the manor under s. 51.

EXCHANGES

I.

AGREEMENT *for an* EXCHANGE *of* FREEHOLDS *for* FREEHOLDS, COPYHOLDS (*a*), *or* LEASEHOLDS, *and for payment of an agreed* SUM *for* EQUALITY. VARIATION *where such sum is to be fixed by* ARBITRATION (*b*).

Parties. AGRMT made this —— day of ——, 18—, BETN A.,

Recitals of title. of, &c., of the one pt, & B., of, &c., of the other pt. *Recite title of A. to freehds descd in 1st schdle in fee*, p. 398 [subjt as hinafter mentd]. *Similar recital of title of B. to freehds or copyhds in 2nd schdle*, [*or, if leasehd*, AND WHAS the sd B. is entled to the leasehd hds descd in the 2nd schdle hto for

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(*a*) As to the enfranchisement of copyholds, see the Copyhold Act, 1887, s. 1.

As to exchanges. (*b*) As to exchanges, see 2 Dav. Prec., pt. 1. Reference may be made to the enactment in 8 & 9 Vict. c. 106, s. 4, doing away with the mutual implied condition of re-entry, which was productive of great inconvenience in exchanges at common law; see as to this Hood & Challis, S. L. Act, 195; Byth. Conv., Vol. IV. 3rd ed., pp. 3, 4. As to exchanges by the Board of Agriculture under the General Enclosure Acts, which are extensively made use of, not only in cases where the parties are unable otherwise to effect a valid exchange, but also where they are so able but are desirous of saving the expense of the double investigation of title, see p. 707, note. Recourse cannot, however, be had to the Acts where the inequality in value exceeds one-eighth. As to exchanges in the case of lunatics, see 53 Vict. c. 5, s. 120 (*b*).

Stamp. A conveyance on exchange is chargeable with *ad valorem* sale duty on the sum, if any, paid for equality, Stamp Act, 1891, schedule "Exchange," and s. 73. The contract for exchange, even if it took the form of mutual sales, would not be chargeable with *ad valorem* duty under s. 59 of the Act, as the subject-matter is a legal, and not merely an equitable, estate in the land; see p. 350, note.

the residue now unexpired of a term of —— yrs from the —— day of ——, under an indre of lease dated, &c., & expd to be made, &c., subjt to the yrly rent of ——, & to the covts & condons in the same indre contd:] AND WHAS the sd A. & B. have agrd to make an exchge by way of mutual sale & convce (*c*), of the sd respve hds descd in the 1st & 2nd schdles hto, & for the paymt of a sum of moy for equality of value as hinafter mentd: NOW IT IS HBY AGRD as follows: Agreement.

1. THE SD A. shl, in conson of the hds hby agrd to be conveyed by the sd B. to the sd A. [& of the sum of moy to be pd by the sd B. to the sd A. as hinafter mentd], sell & convey to the sd B. the hds descd in the 1st schdle hto, with the appurts thof & the inhance thof in fee simple in posson free from incumbces [except as hinafter mentd]. Agreement for conveyance by A.

2. *Similar agrmt for sale & convce by B. to A. of the hds descd in 2nd schdle; or if copyhd,* THE SD B. shl, in conson, &c., sell & convey to the sd A. the hds descd in the 2nd schdle hto, with the appurts & the inhance thof in posson accdg to the custom of the sd manor, subjt to the manorial rts, but free from incumbces [except as hinafter mentd]: *or, if leasehd,* THE SD B. shl, in conson, &c., sell & assn to the sd A. the hds descd in the 2nd schdle hto for the residue now to come of the sd term of —— yrs, subjt to the sd yrly rent of £——, & the covts & condons in the sd indre of lease contd, but free from incumbces [except as hinafter mentd]. Agreement for conveyance by B.

3. [*Provon as to outgoings, easemts, &c., subjt to wch the respive premes are conveyed, see* CONDONS OF SALE].

4. THE SD hds belonging to the sd A. being considered to be of greater value than the sd hds belonging to the sd B. [by the sum of £——], the sd B. shl, upon the exon of the Payment of money for equality.

(*c*) The contract should be expressed to be by way of mutual sale to prevent any doubt whether the statutory provisions as to contracts for sale (as to which see p. 252) are applicable; or these provisions may be expressly incorporated by the clause at the end, which in any case had better be inserted.

convce or assurce to him of the sd hds of the sd A., pay to the sd A. the sum of £—— for equality of value, *or*, "a sum of moy for equality of value to be fixed, at the jt expse of the pties, by C., of, &c., & D., of, &c., or in case of diffce by an umpire, to be appted by such referees in writg bfe enterg on the reference; & the decision of the sd referees or their umpire shl be final," *or*, "the difference in value of the sd premes shl be made good by a paymt in moy, to be made by the sd A. to the sd B., or by the sd B. to the sd A. (as the case may be), & the amt & time of paymt thof, & the mode in wch the sd sum shl be pd, namely, whether by a sum in gross or by instalmts or by way of rent-chge, & the mode in wch the paymt, if postponed, shl be secd, shl be fixed, &c., *as bfe*, & the sd moy shl be pd or secd accdly."

Title. 5. EACH of them, the sd A. & B. shl deliver to the other of them or his solor, within —— weeks from the date hrof, an abstract of his title to the sd respive premes, *Add provons as to title, &c., as on a sale, see* CONDONS OF SALE *&* CONTRACTS FOR SALE [*or*, each of the sd pties shl accept the title of the other witht investigon, & witht requirg any abstract of such title, or the prodon of any deeds or other evidce thof].

Completion and conveyance. 6. THE SD exchange shl be completed on the —— day of —— at the office of Messrs. ——, at ——, when each of the sd pties (togr with all other necy pties, if any), shl exte or make a pper assurce of the sd hds & premes belonging to him unto the other of them free from incumbces [save as afsd]; to be prepared by & at the expse of the pty to whom the same is made. *Add any provons as to covts to be entd into by eir pty as on a sale.*

Possession and outgoings. 7. EACH of the sd pties shl be entled to the posson or rect of the rents & profits of, & shl dischge the outgoings in respt of, the premes hby agrd to be conveyed or assured to him from the —— day of —— next.

Interest on non-completion. 8. IF FROM any cause whatever the sd respive convces & assurces shl not be completed on or bfe the sd —— day of —— next, intt at the rate of £5 p. c. p. a. upon the sum to

be pd for equality of value as afsd shl be pd by the sd B., *or*, "the pty by whom such sum shl be payable," from the sd —— day of —— next, until the complon of the sd convces & assurces. *Add provon for compenson for misdescription & any other provons as to expses, retention of deeds, or orwise, wch may be required, as on a sale. See* CONDONS OF SALE, *&* CONTRACTS FOR SALE.

9. THE PROVONS of the Vendor & Pchaser Act, 1874, & the Convcg Acts, 1881, 1882, relatg to contracts for sale of land, shl apply to this contract so far as the same may be applicable & subjt to the provons hrin contd in the same mner as if this were a contract for mutual sales. IN WITS, &c.

[*Two schdles of pcels.*]

II.

AGREEMENT *for* EXCHANGE *of* FREEHOLDS *between a* TENANT FOR LIFE, *under the* SETTLED LAND ACTS, *and an* ABSOLUTE OWNER, *with* VARIATIONS *where the exchange is subject to the* RESERVATION *of a* RIGHT OF WAY *for mining purposes, or of* RESTRICTIVE COVENANTS *affecting the land given in exchange, and where it is made partly in consideration of the* GRANT *of a* RIGHT OF WAY, *for mining purposes, over other adjoining land belonging to the absolute owner* (*a*).

(*a*) The Settled Land Act, 1882, s. 3 (iii.) and s. 4 (2, 5), authorises the tenant for life to make an exchange of the settled land or any part thereof for other land, including an exchange in consideration of money paid (*i.e.* by either party) for equality. The exchange may be subject to restrictions or reservations on either side, s. 4 (6); and by the Act of 1882, s. 17 (which applied only to mineral properties), as extended by the Act of 1890, s. 5, easements or rights of any kind may be granted or reserved over or in relation to the settled land or the other land, or may be given or taken in exchange for land or any other easement or right. As to whether freeholds may be exchanged for leaseholds, see Hood & Challis, 191. As to conveyances, see ss. 20, 24: and as to incumbrances

Provisions of Settled Land Act, 1882, as to exchanges.

Parties.

ARTICLES OF AGRMT made the —— day of ——, BETN A., of, &c. (hinafter called the vendor (*a*), wch expression shl include his succors in title where the case so requires or admits) of the one pt, & B., of, &c. (hinafter called the pchaser (*a*), wch expression shl include his hrs, exs, ads, & assns where the case so requires or admits) of the other pt, whby it is agrd as follows :

Vendor contracts as tenant for life.

1. THIS agrmt is entd into by the vendor as tenant for life [limd owner], of the este known as the X. este situate, &c., under the will, dated, &c., of Z., deced, & is intd to be carried into effect under the powers of the Settled Land Acts, 1882 to 1890, as extended by the sd will.

Conveyance by vendor.

2. THE vendor shl convey to the pchaser the pce of land, &c., wch is delineated on the plan hto annexed & thrin coloured ——, formg pt of the X. este afsd [inclusive of the site of so much of the proposed new road shown on the sd plan as passes through the sd X. este] with the appurts thof & the inhance thof in fee simple in posson [subjt as hinafter exprd] in conson & exchange for the pces of land hby agrd to be conveyed by the pchaser to the vendor [& the rt of way or road hinafter agrd to be grted in exchange by the pchaser to the vendor through the este of the pchaser known as the Y. este] [& of the sum of moy to be pd by the pchaser for equality as hinafter mentd].

3. *Provons as to outgoings, tenancies, &c., affectg the land given* [*& taken*] *in exchange.*

4. *Paymt of moy for equality*, p. 701 ; *the moy to be pd* "at the option of the vendor to his trees or into Ct, &c."

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s. 5. Where the tenant for life is the owner of the land to be exchanged for the settled land, the trustees of the settlement are to stand in his place for the purpose of exercising the statutory powers; Act of 1890, s. 12. The general provisions stated p. 501 *et seq.* as to sales, conveyances, and re-investments, apply, as far as may be, to exchanges, except that (as pointed out at p. 508) s. 16 of the Act of 1890, extending the definition of "trustees of the settlement," does not apply to exchanges. By s. 18, money required for equality may be raised by mortgage; see a Precedent of such a mortgage in Vol. II., MORTGAGES.

(*a*) These expressions, although not strictly appropriate to an exchange, are used for convenience.

[5. The sd convce to the pchaser shl also be subjt to the reservon hinafter agrd to be made to the vendor of the rt of way & road hinafter mentd, so far as the same passes through the land hinbfe agrd to be conveyed to the pchaser]. Reservation of right of way.

6. In conson & in exchange for the pce of land hinbfe agrd to be conveyed to the pchaser the pchaser shl grt & convey to the vendor the pce of land, *pcels*, with the appurts thof & the inhance thof in fee simple in posson [togr with the rt of way & road hinafter mentd so far as the same passes through the sd este of the pchaser known as the Y. este, wch is delineated on the sd plan & thrin coloured ——]. Conveyance by purchaser.

[7. The vendor & his lessees & tenants shl be entled in common with the pchaser & all other psons for the time being entled thto to a rt of way & road & with or witht horses & other animals, carts, carriages, & other vehicles for the convce of minl produce, &c., *state pposes*, through, along, & over the new road to be made by the pchaser as hinafter mentd through the sd Y. este, & the land hby agrd to be conveyed to the pchaser, from —— common to the high road leadg from —— to ——, as shown on the sd plan, such rt of way & road to be secd to the vendor as to the pt thof wch passes through the land hinbfe agrd to be conveyed to the pchaser by way of reservon as afsd, & as to the pt thof wch passes through the Y. este of the pchaser by way of grt & convce in exchange as afsd]. Right of way.

[8. The pchaser shl at his own sole expse make & construct the sd rd (*b*), includg the portion thof passg through the land hinbfe agrd to be conveyed to the pchaser, of an uniform width of not less than —— feet throughout, & pperly metal the same to the satisfon in all respts of the surveyor of the vendor, & complete the same on or bfe the Making road.

(*b*) It is a question whether the power in s. 16 of the Settled Land Act, 1882, to lay out and appropriate roads, &c., extends to authorising the expenditure of capital money in the construction, &c., of the roads, &c.; see ss. 21 (iii.) and 25 (xvii.); but if the site of the roads is sold or given in exchange, this liability may be imposed on the purchaser. Construction of roads out of capital money.

—— day of ——, & at all times keep in repair & maintain the sd road in good order & fit for use & traffic until the same shl be adopted by the parish or other local authority, & shl in the sd assurce or deed enter into a pper covt in that behalf].

Restrictive covenants as to building.

9. THE pchaser shl in the assurce of the land hby agrd to be conveyed covt as follows, namely, *restrictive covts as to bldg, &c. on* "the land hby agrd to be conveyed to the pchaser," *see* p. 466. The covts to be entd into as afsd shl be framed so as to be bindg so far as may be on the pchaser, his hrs & assns & all psons from time to time entled to or intted in the sd land hby agrd to be conveyed, & so that such covts shl enure for the benefit of the vendor & all psons from time to time entled to or intted in the X. este afsd.

10. *Usual provons as to title to land given by vendor in exchange—identity—expses—time for delivery of pchaser's requons—rescindg of contract & misdescription. See* "CONDONS OF SALE" & "CONTRACTS FOR SALE."

Provisions as to purchaser's title.

11. *Provons as to title to be deduced by pchaser.*

12. THE vendor shl be subjt to the like restrons & stipulons as to the expses incidental to such dedon of title as last afsd, & as to the time for deliverg requons & objons with respt to such title as are hinbfe contd & made bindg on the pchaser with respt to the title to the land hby agrd to be conveyed in exchange to him.

Completion.

13. THIS agrmt shl, subjt to the stipulons hinbfe contd, be completed & carried out on the —— day of —— at the office of Messrs. ——, the vendor's solors, by the exon by the sd respive pties & all other necy pties, if any, of a pper assurce or deed, to be prepared by & at the expse of the pchaser; & the expse of the perusal on behalf of & exon by all pties other than the vendor or his trees (shd their concurrce be necy) of such assurce or deed shl be borne by the pchaser. *Provon as to covts of tenant for life as at* p. 264. A duplicate of the sd assurce or deed, to be prepared by & at the expse of the vendor, shl be exted by the pchaser.

14. *Provons as to posson & outgoings, & as to munimts retained by the respive pties. See* "CONDONS OF SALE" & "CONTRACTS FOR SALE." AS WITS, &c.

III.

AGREEMENT *for an* EXCHANGE *to be carried out by the* BOARD OF AGRICULTURE (*a*).

MEMDUM OF AGRMT made the —— day of ——, Parties.
BETN A., of, &c., of the one pt, & B., of, &c., & C., of, &c., of the other pt. *Recitals showing the title of the pties;* AND Recitals.
WHAS the sd A. has agrd with the sd B. & C. to make such exchange as is hinafter mentd: NOW IT IS HBY AGRD as follows:

1. THE sd A. shl give to, & cause to be vested in the sd B. & C., their hrs & assns, the hds desed in the 1st schdle hto, with the appurts, in exchange for the hds desed in the 2nd schdle hto, with their appurts, which shl be given by the sd B. & C. to or caused by them to be vested in the sd A., his hrs & assns. Agreement to exchange

2. THE exchange shl be effected within —— calr months from the date hrof, & shl be carried out & perfected by the Board of Agriculture under the provons of the Acts of Parliament relatg to the exchange of lands. Completion.

3. ALL the costs & expses of & incidental to these psnts, & the carrying out & perfectg of the sd exchange, shl be Costs.

(*a*) See 8 & 9 Vict. c. 118, s. 147, &c.; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111, ss. 4 & 6; 12 & 13 Vict. c. 83, ss. 7 & 11; 15 & 16 Vict. c. 79, s. 17, &c.; 17 & 18 Vict. c. 97; 20 & 21 Vict. c. 31, s. 4, &c.; 31 & 32 Vict. c. 89; 39 & 40 Vict. c. 56, s. 33, and see note to Precedent I., p. 700. The designation of the "Copyhold Enclosure and Tithe Commissioners" was by the Settled Land Act, 1882, s. 48, altered to "The Land Commissioners for England;" and the functions of that body are now by the Board of Agriculture Act, 1889, 52 & 53 Vict. c. 30, s. 2, transferred to the Board of Agriculture. As to exchanges by the Board of Agriculture.

borne & pd as to one moiety by the sd A., & as to the other moiety by the sd B. & C.

Rescission. 4. In case, by reason of the default of eir of the sd pties hto, the sd exchange shl not be perfected within —— calr months from the date hrof, it shl be lful for the pty not in default, at any time after the expiron of such period, to determine this agrmt by notice in writg to the other of the sd pties [in wch case the pty in default shl reimburse the other pty on demand all costs & expses incurred by him or them in relon to the sd intd exchange]. In wits, &c.

IV.

CONVEYANCE *of* Freeholds, *with the concurrence of a* Mortgagee, *by way of* Exchange *for freeholds conveyed by a* Deed *of even date.* Variation *where* Money *is received or paid for* Equality *of exchange.*

Parties, A., *owner of ppty conveyed by this deed*, 1; B., *mtgee*, 2; C., *owner of ppty conveyed by deed of even date*, 3.

Recital. *Recite A.'s seisin in fee of*, "the hds desed in the 1st pt of the schdle hto:" *subjt to mtge to B. for securg £—— & intt.*

Agreement. And whas the sd A. has agrd with the sd C. for the exchange of the sd hds hby grted for a pce of land & hds belonging to the sd C. situate, &c., wch are desed in the 2nd pt of the schdle hto: [And for the paymt by the sd C. to the sd A., *or*, "by the sd A. to the sd C.," of the sum of £—— for equality of exchange]; *agrmt of B. to concur*, p. 411.

Sum to be paid for equality.

Deed of even date. And whas by an indre bearing even date hwith, & expd, &c., the sd pce of land & hds agrd to be given in exchange by the sd C., as afsd, have been conveyed to the sd A. in fee simple in conson of the assurce intd to be hby made [& of the paymt by the sd A. to the sd C. of the sd sum of £—— agrd to be pd for equality of exchge as afsd],

NOW THIS INDRE WITNETH that, in psuance of the sd agrmt & in conson of the convce contd in the sd indre of even date hwith [& of the sum of £—— upon the exon hrof pd by the sd C. with the consent of the sd B. to the sd A. for equality of exchange, the rect whof is hby acknowed], the sd B., as mtgee, at the reqt of the sd A. doth hby grt & rele, & the sd A., as benefl owner, doth hby grt & confirm unto the sd C., *pcels*, p. 415; TO HOLD the same UNTO & TO THE USE of the sd C., his hrs & assns for ever, *free from the mtge*, p. 434; [*Acknowcmt by B. as to munimts retained*, p. 459.] IN WITS, &c. Witnesseth. Grant. Habendum. To use of grantee.

[*Schdle of Pcels.*]

V.

CONVEYANCE *in* EXCHANGE *by* ONE DEED (*a*) *of* FREEHOLDS *between Tenants in Fee for* STRAIGHTENING BOUNDARIES. AGREEMENT *as to* PARTY-WALL, *and* RESERVATION *of right to* LIGHT.

PARTIES, A., *owner of one ppty*, 1; B., *owner of other ppty*, 2. WHAS the sd A. is entled in fee simple, free from incumbces, to the land with the bldgs thron, edged resply —— & —— on the plan hto annexed, & the sd B. is entled in fee simple, free from incumbces, to the land with the bldgs thron, edged resply —— & —— on the sd plan, wch adjoin or are contiguous to the sd land of the sd A.: AND WHAS the sd A. & B. have agrd to exchange the sd pces of land edged resply —— & —— on the sd plan (formg pt of the ppty to wch they are resply entled as afsd), with the objt of straighteng the boundary lines betn their respive ppties wch are uneven & irregular, & to adjust & settle such boundary lines in mner hinafter appearg, & they have also agrd to Recitals. Title of parties. Agreement for exchange. And as to boundary, party-wall and light.

(*a*) To be executed in duplicate. It is usual, where the case admits, to have two deeds; see the last Precedent.

enter into the arrangemt hinafter contd for the reservon or grt to the sd B. of such rt of light & air & other rts as are hinafter expd, NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson of the convce in exchange hinafter made by the sd B. & of the premes, the sd A., **as benefl owner**, doth hby grt unto the sd B. all that pce of land contg —— square feet or thrabouts & edged —— on the sd plan hto annexed: To HOLD the same unto & to the use of the sd B., his hrs & assns. *Similar grt by B. to A. of the other pce of land given in exchange*, "subjt to such reservon or grt to the sd B. as is hinafter contd." PROVD ALWAYS, & it is hby agrd & decld, that the grt & convce lastly hinbfe contd shl be subjt to the reservon of, & the sd A. doth hby grt to the sd B., his hrs & assns, the free & uninterrupted access of light & air at all times hrafter over the sd pce of land edged —— on the sd plan, to the bldgs of whatsr height & in whatsr poson wch shl for the time being be erected or standg on the land of the sd B., edged —— on the sd plan, or any pt thof & to all windows or openings wch may from time to time exist in such bldgs, & with liberty to the sd B., his hrs & assns, from time to time to increase the height of the sd bldgs & to rebuild, add to, or alter the same in such poson & mner & with such windows or openings for light or air as may be thought fit, & that the sd pce of land edged —— shl at all times hrafter be kept by the sd A., his hrs & assns, open & unbuilt upon, & that no erection or thing shl at any time be placed thron wch may in any degree obstruct or interfere with such access of light or air as afsd; AND IT IS HBY FURTHER AGRD & decld that the straight line marked on the sd plan betn the points L, M, N & O, shl henceforth be the boundary line betn the sd hds & ppties of the sd A. & B. & their respive hrs & assns: AND FURTHER that the wall now standg betn the points marked —— on the sd plan shl be deemed & used & maintained as a pty-wall (*a*)

Witnesseth.

Grant.

Habendum.

Reservation and grant of light, &c.

Agreement as to boundary.

Party-wall.

(*a*) As to party-walls, see *Matts* v. *Hawkins*, 5 Taunt. 20; *Cubitt* v. *Porter*, 8 B. & C. 257; *Bradbee* v. *Christ's Hospital*, 4 Man. & Gr. 714,

betn the sd hds & ppties of the sd A. & B. [*Acknowemt & undertakg by A. as to munimts retained by him. The like by B.*, p. 459.] IN WITS, &c.

VI.

EXCHANGE *of* FREEHOLDS *between a* TENANT FOR LIFE *conveying under the* SETTLED LAND ACTS, *and an* OWNER IN FEE, *with mutual grants of* RIGHTS OF WAY, *and* RESTRICTIONS *as to* BUILDING, *Money being paid for* EQUALITY *of Exchange* (*b*).

PARTIES, A., *tenant for life*, 1; B. & C., *trees of settlemt*, 2; D., *owner in fee*, 3. *Recite settlemt under wch* "the sd A. is tenant for life in posson of the X. este, wch includes the pces of land & hds first hby grted, & the land over wch the rt of way first hinafter desed is hby grted; & the sd B. & C. are the trees of the same indre of settlemt for the pposes of the Settled Land Acts, 1882 to 1890" (*c*); *Recital of D.'s seisin in fee of the* "Y. este, wch includes the pces of land & hds secondly hby grted, & the pces of land over wch the rt of way secondly hinafter desed is hby grted:" AND WHAS the sd A., by virtue of the powers of the sd Acts, has agrd with the sd D. for the exchange of the pces of land & hds first hby grted for the pces of land & hds secondly hby grted; & as pt of the terms of the sd exchange it was agrd betn the sd A. & D. that the rt of way first hinafter desed & hby grted shd be grted to the sd D. his hrs & assns, owners & occupiers of the Y. este, in mner hinafter expd, & that the rt of way secondly hinafter desed & hby grted shd

Recitals.

Settlement.

Seisin of owner.

Agreement.

761; *Wiltshire* v. *Sidford*, 1 Man. & R. 404; *Stedman* v. *Smith*, 26 L. J. N. S. Q. B. 314; 8 E. & B. 1; *Murley* v. *McDermott*, 8 A. & E. 138; *Watson* v. *Gray*, 14 Ch. D. 192; Woodfall, L. & T. p. 650; Elph. N. & C. Interp. Deeds, p. 606.

(*b*) See Precedent II. and the notes thereto.

(*c*) See also the other forms of recital at pp. 513, 514.

be grted to the sd A. & his succors in title, owners & occupiers of the X. este, in mner hinafter expd, & that these psnts shd contn such mutual restrictive covts as to bldg & as to the user in other respts of the respive pces of land & premes hby exchanged as are hinafter contd ; & further that the sd B. & C. shd, out of moys in their hands formg capital moys of the sd settlemt liable to be invested under the afsd Act, pay the sum of £—— to the sd D. for equality of exchange ; NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, & in conson of the convce by way of exchange hinafter made by the sd D. the sd A., **as benefl owner**, by virtue of the powers vested in him under the Settled Land Acts, 1882 to 1890, & the sd will, & of every other power him enablg, doth hby grt unto the sd D., *Pcels, by reference to schdle & map, see* p. 417, TOGR WITH full rt & liberty for the sd D., his hrs & assns, owners & occupiers of the Y. este, &c., *rt of way, see* p. 421, TO HOLD the same UNTO & TO THE USE of the sd D. his hrs & assns for ever, subjt to the leases & tenancies affectg the pces of land hinbfe conveyed ; AND THIS INDRE ALSO WITNETH that in further psuance, &c., & in conson of the convce by way of exchange hinbfe made by the sd A., & of the sum of £—— now pd to the sd D. by the sd B. & C. by diron of the sd A. out of such capital moys as afsd (the rect, &c.), the sd D., **as benefl owner**, by the diron of the sd A., doth hby grt unto the sd B. & C. *Pcels by reference to schdle & map, see* p. 417, TOGR WITH full rt & liberty for the sd B. & C. & their hrs, & also for the sd A. & his succors in title, owners & occupiers of the X. este, &c., *rt of way*, p. 421 ; TO HOLD the same UNTO the sd B. & C. & their hrs, subjt to the leases & tenancies affecting the sd respive pces of land & premes lastly hby conveyed, *to uses of settlemt, see* p. 435 ; AND the sd A. doth hby for himself, his hrs, exs, ads, succors, & assns, & so as by virtue of the provons of the Settled Land Acts, 1882 to 1890, to bind not only himself psonally, but also all future owners & occupiers of the hds taken in exchange by him as afsd, & to bind such hds

Witnesseth.

Grant by tenant for life.

Right of way.

Habendum to use of owner.

Further witnesseth.

Grant by owner.

Right of way.

Habendum to uses of settlement.

Covenant by tenant for life restrictive of building.

into whosesr hands the same may come, covt with the sd D. his hrs & assns, the owner or owners for the time being of the Y. este, that the sd A. his succors & assns, will, &c., *Covts restrictive of bldg, &c., on the lands taken in exchange by A., see* p. 466; And the sd D. doth hby for himself, his hrs, exs, ads, & assns, to the intent to bind not only himself but all psons claimg title under him to the hds taken in exchange by him as afsd, covt with the sd B. & C., & their hrs, & also separately with the sd A. & his succors in title, the owner or owners for the time being of the X. este, that the sd D. his hrs & assns will, &c., *Covts restrictive of bldg, &c., on lands taken by D. in exchange, see* p. 466; [*Provo restrictg A.'s liability under implied covts for title, if required*, p. 452, *form* II.]: [*Acknowcmt & undertakg by A. with D., & by D. with B. & C., as to munimts retained by them resply*, p. 459]. In wits, &c.

Covenant by owner restrictive of building.

[*Two schdles of Pcels & two of Munimts.*]

INDEMNITY (*a*).

I.

INDEMNITY *to* PURCHASER *of* LAND CHARGED *with* DEBTS *and* LEGACIES, *effected by a* DEMISE *to* TRUSTEES *of lands of which the Vendor is seised in fee* (*b*).

PARTIES, A., *vendor*, 1; *B., pchaser*, 2; C. & D., *trees*, 3.

Recitals. *Recitals showg that A. is seised in fee of the lands* "intd to be hby demised;" *That under the will of K. he became seised in fee of the —— este, subjt to a chge of debts & legacies; Sale & convce of even date of pt of the —— este to B.*:

Agreement. AND WHAS upon the sd sale it was agrd that the sd A shd give to the sd B. such indemnity agst the debts & legacies chged by the sd will on the sd hds & premes con-

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(*a*) See also BONDS and RELEASES.

As to freeing lands from incumbrances. (*b*) As to freeing land from incumbrances on a sale, see the Conv. Act, 1881, s. 5, above, p. 553, note ; and as to settled estates, the Settled Land Act, 1882, ss. 5, 24. An indemnity against a defect of title should, of course, usually be by a separate instrument, in order that the defect may not appear on the face of the title.

Stamp. As to the stamp duty on indemnity deeds and bonds, see the heading MORTGAGE, &c., in the schedule to the Stamp Act, 1891; *Lord Canning* v. *Roper*, 1 El. & B. 164; and as to equitable securities under hand only by way of indemnity, see sub-div. (3) of the schedule; the effect, however, of s. 88, sub-div. (2) of the Act is that where the total amount for which the indemnity is given is not limited, the security need not be stamped with *ad valorem* duty in the first instance, as the duty can be paid when occasion arises.

veyed to him by the hinbfe recited indre, & orwise as is hinafter contd: NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt, & in conson of the premes, & of the sum of 5*s.* now pd to the sd A. by the sd C. & D. (*c*) the sd A. doth hby bargain, sell, & demise unto the sd C. & D., *pcels*, p. 415; TO HOLD the same UNTO the sd C. & D., their exs, ads, & assns, for the term of 1000 yrs from the day next bfe the date of these psnts, witht impeachmt of waste, upon the trusts hinafter decld, that is to say: UPON TRUST in case the sd B., his hrs, exs, ads, or assns, shl at any time pay or incur any sum or sums of moy, costs, damages, or expses in respt of the debts & legacies chged by the sd will of the sd K. on the sd hds & premes conveyed to the sd B. by the hinbfe recited indre of even date hwith, or any of them, or by reason of any action, pcdg, claim, or demand in respt of such debts or legacies or any of them, then & in every such case the sd C. & D., or the survor of them, or other the trees or tree for the time being of these psnts, shl by & out of the rents & profits of the sd hds & premes hby demised, or by the sale of timber or minls, or by mtge of the same premes or any of them for all or any pt of the sd term, or by all or any of the means afsd, or by any other reasble means, from time to time raise such sum or sums of moy as shl be sufft to pay & satisfy all sums of moy, damages, costs, & expses wch the sd B., his hrs, exs, ads, or assns, shl pay or incur as afsd, & also such sum or sums of moy as shl be required to satisfy all costs & expses incurred in or about the exon of the trusts of the sd term, or wch the sd trees or tree may incur in conseqce of any action or other pcdg wch may be instituted for raisg any moy under the trusts of the sd term or in anywise relatg thto, & shl apply the moys so to be raised as afsd accdly, & shl pay the surplus, if any,

Witnesseth.

Bargain and sale.

Habendum to trustees for term.

Upon trust to indemnify purchaser.

(*c*) A nominal consideration is stated, and the words "bargain and sell" added in order to raise a use in favour of the trustees, without which they would only obtain an *interesse termini* until actual entry; see 1 Dav. Prec., p. 65; Elph. Introd. Conv., p. 225.

As to nominal consideration.

of the same moys to the sd A., his hrs or assns, AND SUBJT & witht prejudice to the trusts afsd, shl permit the sd A., his hrs & assns, to rece the rents & profits of the premes hby demised for his & their own benefit: PROVD ALWAYS & it is hby agrd & decld that in case no claim or demand shl be made agst the sd B., his hrs or assns, or agst the sd hds & premes conveyed to the sd B. by the hinbfe recited indre of, &c., in respt of any of the sd debts or legacies within the period of —— yrs from the date of these psnts, or in case all claims & demands wch shl be so made shl be orwise pd & satisfied within 3 calr months next after the same resply shl have been made, & if the sd B., his hrs, exs, ads, & assns, & also the sd trees or tree shl be reimbursed & satisfied by the sd A., his hrs, exs, ads, or assns, upon demand, all such moys, damages, costs, & expses, as he or they resply shl pay or incur in respt of the premes, then & in such case the sd term of 1000 yrs shl immedly on the expiron of the sd period of —— yrs be assned or surrendered to the sd A., his hrs, exs, ads, or assns, if so required, or shl orwise cease & determine: AND IT IS HBY AGRD & DECLD that, upon any mtge purportg to be made in psuance of the trusts hinbfe contd, the mtgee or mtgees shl not be bound to enquire as to the necessity or occasion for raisg any moy for the pposes afsd, or to see to the applicon of his or their mtge moy, & any such mtge may be made with a power of sale & with such other provons as may be deemed expedient: AND IT IS HBY decld that the same covts shl be deemed to be hby implied on the pt of the sd A. as if these psnts had been a conveyce by way of mtge & the sd A. had been expd to bargain, sell, & demise the premes hby bargained, sold, & demised as benefl owner (*a*). IN WITS, &c.

Proviso for cesser of term.

Provision for protection of mortgagees.

Incorporation of statutory covenants for title.

Covenants for title.

(*a*) Probably this is a "mortgage" within the Conv. Act, 1881, s. 2, so that the insertion of the words "**as benefl owner**" would imply the covenants for title under s. 7 (1) (C.) of the Act, see MORTGAGES; but to avoid question the statutory covenants are expressly incorporated. The trustees' receipt clause and power to appoint new trustees are supplied by the Conv. Act, 1881, ss. 31, 36; see SETTLEMENTS.

II.

DEED *of* DECLARATION *of* TRUST *of a* SUM *of* CONSOLS *produced by* INVESTMENT *of part of* PURCHASE-MONEY *for* INDEMNIFYING *the purchaser against a* CONTINGENT EQUITABLE CHARGE.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2; C. & D., *trees*, 3.

Recite convce of even date by A. to B. of "certn hds situate in the parish of ——, in the coy of ——, known as, &c., & formg pt of an este called the —— este"; AND WHAS during the investigon of the title to the premes comprd in the hinbfe recited convce of even date hwith, the sd B. reced notice of a contingent equitable chge on the sd —— este of the sum of £——, raisable with intt, & payable to such child or chn of the late L. as shl attn the age of 21 yrs: AND WHAS the sd L. had 2 chn only, namely M. & N., who are minors of the respive ages of —— yrs & —— yrs or thabouts; AND WHAS it has been agrd that, for the ppose of indemnifyg the sd B., his hrs & assns, & the sd hds conveyed to him as afsd, agst the sd contingent chge of £—— & intt, in case the same shl become raisable & payable, & from all claims in respt thof, a sum of £——, pt of the sd pchase-moy of £——, shd be invested in the names of the sd C., a tree nominated by the sd A., & of the sd D., a tree nominated by the sd B., upon the trusts hinafter decld, & that the sd A. shd enter into the covts hinafter contd; AND WHAS immedly bfe the exon of these psnts, the sd B. has, with the approbon of the sd A., invested the sum of £——, pt of the sd pchase-moy wch in the sd convce is stated to have been pd to the sd A., in the pchase of the sum of £—— £2 15*s.* p. c. Consold Stk, in the names of the sd C. & D. NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson of the premes, it is hby agrd & decld that the sd C. & D., their exs & ads, shl stand possed of the sd sum of £—— Stk as a fund for keepg

Recitals.

Conveyance of even date.

Purchaser received notice of contingent equitable charge.

Persons entitled to charge.

Agreement for indemnifying purchaser.

Investment of part of the purchase-money.

Witnesseth.

Declaration of trust.

To indemnify purchaser.

indemnified the sd hds comprd in & conveyed by the sd indre of even date hwith & every pt thof, & the sd B., his hrs & assns, in respt thof, agst the sd sum of £—— & intt chged thron, & raisable & payable in the events afsd, & all sums of moy, costs, & expses, wch the sd B., his hrs, exs, ads, or assns, may at any time hrafter incur or become liable to pay by reason of any claims, demands, actions, or pcdgs, to be made or instituted at any time or times hrafter by the sd M. & N., or eir of them, or the exs, ads, or assns, of eir of them, in respt of the sd sum of £—— & intt, or any pt thof; & in case the sd B., his hrs, exs, ads, or assns, shl be called upon to pay & shl pay the sd sum of £—— & intt, or any pt thof resply, or any such costs or expses as afsd, then upon trust at the reqt of the sd B., his hrs, exs, ads, or assns, by & out of the divds of the sd Stk, or by the sale of the same, or a competent pt thof, to repay to & reimburse him & them all sums of moy, costs & expses wch he or they shl so pay, togr with intt thron at the rate of 5 p.c. p.a. from the time of the same havg been pd, & also to pay all expses of raisg the same & carrying the psnt trusts into effect, & subjt to the trusts afsd shl stand possed of the sd sum of £—— Stk & the divds thof IN TRUST for the sd A., his exs, ads, & assns; AND UNTIL such reqt as last afsd shl be made shl permit him & them to rece the divds of the sd sum of £—— Stk; AND IN CASE no such claim, demand, action, or pcdg as afsd, shl be made or instituted bfe the —— day of —— in the yr ——, *i.e.*, 12 *yrs from the day when the yor child will attn the age of* 21 (*a*), or in case the sd M. & N. shl both die witht havg attned the age of 21 yrs, or both or eir of them the sd M. & N. shl attn the age of 21 yrs, & the sd A., his exs or ads, shl pay to them or him (as the case may be), or to their or his exs or ads, the sd sum of £——, togr with such intt as may become payable thron, & shl also pay to the sd B., his hrs, exs, ads, or assns all costs & expses wch he or they may

Subject thereto to pay interest to vendor.

If no claim arises.

(*a*) See the Real Property Limitation Act, 1874, s. 8.

have incurred or become liable to pay by reason of any such claim, demand, action, or pcdgs as afsd: THEN UPON TRUST to transfer the sd sum of £——, or so much thof as shl not have been sold or disposed of for the pposes afsd, to the sd A., his exs, ads, or assns: AND THIS INDRE ALSO WITNETH that in psuance of the sd agrmt, & in conson of the premes the sd A. doth hby chge the sd sum of £—— & intt (in the events in wch the same will become raisable & payable as afsd) on the remaing portion of the sd —— este, in exoneron of the sd hds comprd in the sd indre of even date hwith: AND DOTH hby covt with the sd B., his hrs & assns, that he the sd A., his hrs, exs, & ads, will keep effectually indemnified the sd B., his hrs, exs, ads, & assns, & the sd hds comprd in the sd indre of even date hwith agst the sd sum of £—— & intt, & every pt thof, & all such costs, expses, claims, demands, actions, & pcdgs, as afsd (*b*). IN WITS, &c.

To transfer to vendor.

Further witnesseth.

Charge by vendor on remainder of estate,

and covenant for indemnity.

III.

INDEMNITY *to a* PURCHASER *against a* PERPETUAL RENT-CHARGE *by the* CREATION *of another* RENT-CHARGE *out of part of the property subject to the original rent-charge* (*c*).

PARTIES, A., *vendor*, 1; B., *pchaser*, 2: *Recite convce of even date by A. to B., of* "the hds shortly descd in the 1st schdle hto:" AND WHAS the sd hds descd in the 1st schdle hto togr with the hds descd in the 2nd schdle hto to wch the sd A. is entled in fee simple are subjt to a perpetual yrly

Recitals.

Conveyance of even date.

Creation of rent-charge.

(*b*) The power to appoint new trustees is supplied by the Conv. Act, 1881, s. 31; see SETTLEMENTS.

(*c*) This is a more efficacious mode of securing the indemnity than the common one of giving merely powers of distress and entry and perception of rents (as in the next Precedent); see p. 335, note.

rent-chge of £—— for the benefit of C., his hrs & assns, wch was chged thron by an indre, &c., & to the powers & remedies thby given to the sd C., his hrs & assns, for securg the sd rent-chge; AND WHAS upon the sale by the sd A. to the sd B. of the sd hds descd in the 1st schdle hto, it was agrd that the sd A. shd exte & give to the sd B. such indemnity agst the sd rent-chge as is hinafter contd; NOW THIS INDRE WITNETH that in psuance of the sd agrmt, & in conson of the premes the sd A. hby covts with the sd B., his hrs & assns, that the sd yrly rent-chge of £—— shl henceforth be wholly borne by & dischged out of the sd hds descd in the 2nd schdle hto in exoneron of the sd hds descd in the 1st schdle hto; & further that he the sd A., his hrs, exs, ads, & assns will at all times hrafter keep the sd B., his hrs, exs, ads, & assns, & the sd hds descd in the 1st schdle hto effectly indemnified agst the sd rent-chge, & all claims, demands, costs & expses in respt thof; AND THIS INDRE FURTHER WITNETH that in psuance of the sd agrmt, & in conson of the premes, the sd A. doth hby grt unto the sd B. ALL & SINGR the sd hds specified in the 2nd schdle hto, TO HOLD the same premes UNTO the sd B. & his hrs, to the uses & upon the trusts hinafter decld concerng the same, that is to say, TO THE USE that the sd B., his hrs & assns, may henceforth rece a yrly rent-chge of £——, *the amt of the rent-chge to be indemnified agst*, to be chged upon the sd hds descd in the 2nd schdle hto, & to be payable by qtrly paymts on the —— day of ——, &c., *the days of paymt to be the same as those of the rent-chge to be indemnified agst*, witht any dedon, the first of such paymts to be made on the —— day of —— next; AND TO THE FURTHER USE that the sd B., his hrs & assns, shl have all such powers & remedies for the recovery of such rent-chge as are conferred on owners of rent-chges by the Conveg & Law of Ppty Act, 1881, or may orwise by law be

Contract for sale and indemnity.

Witnesseth.

Covenant.

Rent-charge to be borne by hereditaments in second schedule.

Indemnity.

Further witnesseth.

Grant.

Parcels.

Habendum.

To use that purchaser may receive rent-charge.

With statutory powers for recovery thereof (*a*).

(*a*) As to the statutory powers of distress, &c., for recovery of a rent-charge, see p. 603, note.

available in that behalf, & subjt & chged as afsd To THE USE of the sd A., his hrs & assns: PROVD ALWAYS, & IT IS HBY AGRD & DECLD that the sd yrly rent-chge of £—— hby created, is limd to the sd B., his hrs & assns, to the intent that the same rent-chge & the powers & remedies for the recovery thof may be an indemnity to the sd B., his hrs & assns, & the sd hds descd in the 1st schdle hto agst the sd yrly rent-chge of £—— created by the sd indre of, &c., & all arrears thof, & all powers & remedies for recoverg & enforcg paymt of the same, & all actions, pcdgs, claims, & demands for & in respt of the sd last mentd rent-chge or any pt thof, for wch ppose it is hby agrd & decld that if & whenever any distress or entry for any arrears now due, or hrafter to accrue due, in respt of the sd yrly rent-chge of £—— created by the sd indre of, &c., shl at any time or times hrafter be made upon the sd hds descd in the 1st schdle hto, or any pt thof, or if & whenever any claim or demand for any such arrears shl be made upon the sd B., his hrs or assns, then the sd B., his hrs or assns shl apply the sd yrly rent-chge hby created, & all moys reced by him or them under any exercise of the powers & remedies for the recovery thof, in satisfon & dischge of all such arrears or future paymts of the sd rent-chge limd by the sd indre of, &c., & of all costs & expses wch the sd B., his hrs or assns, shl from time to time pay or incur by reason or in consequce of such distress, entry, claim or demand as afsd, or in or about the exon of the powers of these psnts: AND IT IS HBY FURTHER AGRD & decld that subjt to the indemnity hby provided the sd B., his hrs & assns, shl stand possed of the sd rent-chge hby created in trust for the sd A., his hrs & assns. IN WITS, &c. (*b*).

Subject thereto to use of vendor.

Rent-charge to be indemnity to purchaser.

And subject thereto to be in trust for vendor.

[*Two schdles.*]

(*b*) Notice of this deed should be endorsed on the last conveyance of the hereditaments in the second schedule, so that purchasers may take with notice. Covenants for title, if any, should be absolute covenants as in a mortgage: the statutory covenants in the Conv. Act, 1881, s. 7 (1, D), may be incorporated as at p. 452, but they do not very well fit the case. For a full form of limitation of a rent-charge, see p. 603.

IV.

INDEMNITY *against a* PERPETUAL RENT-CHARGE *by grant of* POWER *of* DISTRESS *over and* ENTRY *upon part of the* LAND *Subject to the* RENT-CHARGE (*a*).

PARTIES, A., *vendor*, 1; B., *pchaser*, 2: *Recitals as in last Prect.* NOW THIS INDRE WITNETH that in psuance of the sd recited agrmt & in conson of the premes, the sd A. doth hby covt with & grt to the sd B., his hrs & assns, that if & whenever any distress, entry, claim or demand shl be made upon the sd hds specified in the 1st schdle hto, or any pt or pts thof, or upon the sd B., his hrs or assns, in respt of the sd rent-chge of £——, or any pt thof, then & in every such case it shl be lful for the sd B., his hrs or assns, to enter into & distrain upon the sd hds specified in the 2nd schdle hto, or any pt thof, in the same mner in wch landlords may do for non-paymt of rent reserved upon leases for yrs, & also to enter into & retain posson of & take the rents & profits of the same hds & premes, or any pt thof (such posson when taken to be witht impeachmt of waste), to the intent that & until by the means afsd or orwise the sd B., his hrs or assns shl be fully pd & satisfied all sums of moy, costs, damages, & expses wch he or they may have pd or incurred by reason of any such distress, entry, claim, or demand as afsd, or any action or pcdg for recoverg paymt of the sd rent-chge of £—— or orwise in relon thto, & also the costs & expses attendg any distress,

Witnesseth.

Power of distress and entry.

As to indemnity by powers of distress and entry.

(*a*) It is not uncommon to give an indemnity by powers of distress and entry in cases of this kind; but the precedent is subject to the doubt already adverted to (p. 335, note, and p. 580, note) whether such powers can be validly given in perpetuity, and also whether the power of distress is not invalidated by the Bills of Sale Acts. The former doubt might be obviated by limiting the powers to lives in being and 21 years; see p. 467, form XVI.

entry, or pcdg made or taken under the authority of these psnts. In wits, &c. (*b*).

[*Two schdles.*]

V

DEED *of* Indemnity *by* Vendor *to* Purchaser *in respect of* Defective Title, *the Indemnity being in the form of* Absolute Covenants *for* Title *as in a* Mortgage.

Parties, A., *vendor*, 1; B., *pchaser*, 2: Whas by an indre bearg even date with these psnts, & expd, &c., a messe farm & lands known as ——, situate, &c., comprisg —— acres or thrabouts, have for the conson thrin mentd been conveyed by the sd A. to the use of the sd B., his hrs & assns, & in the sd indre the usual qualified covts by the sd A. for title to & further assurce of the premes are implied by law by his being expd to convey as benefl owner: And whas upon the investigon of the title to the sd hds the deeds & docts pdced by the sd A. as evidenceg his title thto appeared to show a title to —— acres only, but the whole

Recitals.

Conveyance of even date.

Defect in title (*c*).

(*b*) See note on p. 721 as to notice.

(*c*) The following is a form of recital where the investigation of the title is dispensed with on an agreement that the vendor shall absolutely guarantee it:—

"And whas upon the sale of the premes to the sd B. an investigon into the title of the sd A. was dispensed with by the sd B., & the sd pchase has been completed upon an agrmt that the sd A. shd give an absolute guarantee of such title, & shd for that ppose enter into absolute covts for the title to & further assurce of the premes in mner hinafter expd, wch covts are intd to override," *&c., as in the text.*

Recital where investigation of title dispensed with.

of the premes expd to be conveyed by the sd indre of even date hwith, have for upwards of —— yrs past been in the undisturbed ownership & enjoymt of the sd A., or the psons under whom he claims title: AND WHAS the sd B. accepted the title to the premes & completed the pchase thof as afsd upon an agrmt that the sd A. shd enter into absolute covts for the title to & further assurce of the same as hinafter expd, & wch covts are intd to override & be in no wise controlled by the qualified or restricted covts implied in the sd convce of even date hwith as afsd: NOW THIS INDRE WITNETH that, in psuance of the sd agrmt & in consn of the premes, the sd A. hby covts with the sd B., his hrs & assns, THAT, in addn to the qualified or restricted covts by the sd A. for the title to & further assurce of the sd premes wch are implied in the sd convce of even date hwith, the same or the like covts for the title to & further assurce thof shl be deemed to be thby implied on the pt of the sd A., but witht any qualificon or restrn as regards the psons to whose acts, defaults, or omissions, such covts extend (*a*). IN WITS, &c.

Acceptance of title and contract for indemnity.

Witnesseth.

Extension of statutory covenants for title.

VI.

COVENANT *of* INDEMNITY *by* VENDOR *to purchaser against certain* INCUMBRANCES *and* SUCCESSION DUTY (*b*).

PARTIES, A., *vendor*, 1; B., *pchaser*, 2.

Recitals.

WHAS the estes of the sd A., situate in the coy of ——, are now subjt to the sevl legacies, annies, jture, yrly sums,

Incumbrances.

(*a*) If preferred the covenants may be set out at length as in a mortgage, *mutatis mutandis*; but the mode above adopted seems the best. The statutory mortgage covenants in the Conv. Act, 1881, s. 7, do not fit the case, and cannot be made use of.

(*b*) If necessary this should be extended to "estate duty" under the "Customs, &c., Act, 1889, s. 5."

portions, & chges specified in the schdle hto: *Convce of even date of,* "farm & hds called the —— farm, containg —— acres, situate, ——, &c., formg pt of the sd estes" *to B.*; Conveyance of even date.

And whas upon the sd sale it was agrd that the sd A. shd exte & give to the sd B. such indemnity agst the sd incumbces & the succession duty hinafter mentd as is hinafter contd: Agreement.

NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the premes, the sd A. hby covts with the sd B., his hrs & assns, that the sd A., his hrs, exs, ads, or assns, will at all times hrafter, well & sufftly indemnify & keep indemnified the sd B. his hrs, exs, & assns, & also the sd —— farm & every pt thof, agst the paymt of all & singr the sd legacies, annies, jture, yrly sums, portions, & chges specified in the sd schdle hto, & every pt thof resply, & all intt to become due thron resply, & all arrears & growg & future paymts of the sd annies, jture, & yrly sums, & also agst all the succession duty to become payable on the cesser or satisfon of the sd respive annies, jture & yrly sums, & agst all actions, pcdgs, accts, claims, demands, costs, & expses whatsr, in conseqce of the non-paymt of the sd legacies, &c., intt, arrears & growg or future paymts & succession duty or any of them or any pt thof resply or orwise in relon thto; Covenant to indemnify.

And further, that the sd A., his hrs or assns, will at any time after the sd respive chges & incumbces specified in the schdle hto, or the sd succession duty shl have been satisfied or dischged, or shl have ceased, at the reqt & cost of the sd B., his hrs or assns, pduce to him or them such evidce of such satisfon, dischge or cesser as shl be in the posson or power of the sd A., his hrs or assns; To produce evidence of satisfaction.

And also that, &c., *incumbces & duty to be chged on the rest of A.'s estes in exoneron of the pt sold, see* p. 719. In wits, &c.

[*Schdle.*]

VII.

BOND (*a*) *of* INDEMNITY *from* VENDOR *to purchaser where* TITLE DEEDS LOST.

Obligon of bond from A. to B., p. 228.

Recitals. *Recitals of pchase & convce of even date:* AND WHAS the
Loss of deeds. deeds & munimts of title relatg to the premes by the sd recited indre expd to be grted & assned resply [wch are specified in the schdle hrunder written] are stated by the sd
Condition. A. to have been lost or mislaid: NOW THE CONDON, &c., that if the sd A., his hrs, exs, or ads, shl use his & their best endeavours to discover the sd deeds & munimts [specified in the sd schdle hto], & shl, in case the same or any of them shl be found, forthwith deliver the same whole, uncancelled, & undefaced, or in the condon in wch the same shl be found, to the sd B., his hrs, exs, ads, or assns, & if the sd A., his hrs, exs, or ads, shl at all times hrafter keep indemnified the sd B., his hrs, exs, ads, & assns, & all & every pt of the premes by the sd recited indre expd to be grted & assned resply agst all mtges & incumbces whatsr in anywise affectg the premes, or any of them, or any pt thof, other than incumbces to be created by the sd B., his hrs, exs, ads, or assns, & agst all actions, pedgs, claims, & demands, costs, damages, & expses wch may be brought or made agst him or them, or wch he or they may sustain or incur by or by means of any pson or psons who shl or may have or claim any este, title, or intt in or to the premes, or any pt thof, other than psons claimg under the sd B., Then, &c.

[*Schdle.*]

(*a*) As to the use of bonds, see p. 228, note.

VIII.

BOND *of* INDEMNITY *to* TENANT *paying* RENT *where* TITLE *in* DISPUTE.

Obligon of Bond from A. to B., p. 228. Recitals.

WHAS an action [dispute] is now pendg betn the above bounden A. & other psons concerng the rt to or intt in the revon of the house & premes situate at, &c., wch are now occupied or held by the above-named B., under a lease thof, dated, &c., & made betn, &c.: AND WHAS the sd B. has nevs agrd to pay the rent of the sd house & premes as the same shl grow due to the sd A. upon the sd A. agreeing to indemnify him in respt thof: NOW, &c., that if the sd A., his hrs, exs, ads, or assns, shl pay to the sd B., his hrs, exs, ads, or assns, all such rent, sums of moy, costs, & damages as the sd B., his hrs, exs, ads, or assns, shl by due process of law or orwise be compelled to pay, & all costs & damages wch he or they shl orwise sustain by reason of his or their paying the sd rent or any pt thof to the sd A., his hrs or assns, in mner afsd, Then, &c.

Action pending.

Agreement to pay rent.

Condition.

IX.

DEED *of* INDEMNITY *by* HUSBAND *and* WIFE *to Trustees making an* UNAUTHORISED TRANSFER *of part of the Settled Funds* (*b*).

PARTIES, A. & B., his wife, 1; C. & D., *trees*, 2. *Recite settlemt on marre of A. & B. of the wife's funds in trust for*

(*b*) As to the effect of the wife's covenant under the Married Women's Property Act, 1882, see p. 539, note. The wife should make a will under her power of appointment, so that the settled funds (inclusive of the part sold out), may be liable to satisfy the covenant (*Re Parkin*, [1892] 3 Ch.

Powers of married women to dispose of

the wife for life with restraint on anticipon, remr to the issue, & in default of issue for the wife if survivg the husbd absolutely; & if she shd predece him for her testy apptees or next of kin. That there has been no issue, & wife is past the age of child bearg. AND WHAS the sd trees have at the reqt of the sd A. & B. agrd to sell out the sum of £—— stk formg pt of the sd settled funds, & to pay the proceeds thof to the sd A., on havg such indemnity as is hinafter contd. AND WHAS the sd sum of stk has been sold accdly & the net proceeds thof amtg to £—— have been pd by the sd trees to the sd A., as the sd A. & B. do hby acknowe. NOW THIS INDRE WITNETH that in psuance, &c., & in

Agreement for transfer.

Sale and payment.

Witnesseth.

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reversion of settled funds.

510); but the appointed fund must necessarily by s. 4 of the above-mentioned Act be liable (irrespectively of the terms of the appointment) to satisfy all the debts and engagements of the wife *pari passu*; moreover she cannot bind herself to exercise her testamentary power in any particular way so as to give a right to specific performance (*Re Parkins, ubi sup.*), or not to revoke the will and not to die intestate; and in addition, as the power arises in this case (contrary to the forms used in these precedents) only in the event of her predeceasing her husband, the will would necessarily fail in the converse event, as it cannot operate as a disposition of the wife's reversion in that case under the old law (*Noble* v. *Willock*, 8 Ch. 778; 7 H. L. 580); nor under the Married Women's Property Act, 1882 (*Re Price*, 28 Ch. D. 709), unless the reversion were the wife's separate estate, which it would not be even if the settlement were since that Act, having regard to s. 19 (see *Hancock* v. *Hancock*, 38 Ch. D. 78); and the reversion not being separate estate would not be assets to satisfy the wife's covenant of indemnity. The indemnity therefore so far as the wife is concerned is altogether precarious.

Liability of trustees for paying capital monies to woman restrained from anticipation.

Under the old law the payment of the fund to the wife under such circumstances did not disentitle her to call for payment over again in the event of her surviving her husband (even in case of fraud, *Arnold* v. *Woodhams*, 16 Eq. 29; *Stanley* v. *Stanley*, 7 Ch. D. 589), since the restraint on anticipation effectually prevented her from giving a valid receipt for the capital of the fund; and even if she were not so restrained, such anticipatory payment would have been invalid on the principle of *Whittle* v. *Henning*, 2 Ph. 731; but by the Trustee Act, 1888, 51 & 52 Vict. c. 59, s. 6, the beneficial interest of a married woman may now in such a case be impounded as an indemnity to the trustees, although she is restrained from anticipation; *Griffith* v. *Hughes*, [1892] 3 Ch. 105. As to the power of the Court to dispense with the restraint under the Conv. Act, 1881, s. 39, see Hood & Challis, 105, note; *Re Little*, 40 Ch. D. 418.

conson of the premes each of them the sd A. & B. (the sd B. covtg for the ppose of bindg herself in conscience & also as far as she lfully can so as to chge & bind all separate este or ppty to wch she is now or may hrafter become entled, & all ppty wch she has or may have power so to chge or bind), doth hby covt with the sd C. & D. & each of them & their & each of their exs & ads, that they the sd A. & B. & their respive hrs, exs, & ads will at all times keep the sd C. & D. & their respive hrs, exs, & ads effectually indemnified agst all claims & demands, actions, & pcdgs on the pt of the sd A. & B., or eir of them, or their or eir of their exs, ads, or assns, or any of them or any other pson or psons whomsor, & all costs, chges, & expses in respt of the sd sum of £—— stk so sold as afsd or the divds or income thof or in any way arisg out of or consequential on such sale & paymt as afsd or orwise in respt of the premes. IN WITS. &c. Covenant of indemnity.

X.

DEED *of* COVENANT *and* CHARGE *by way of* INDEMNITY *to a* TRUSTEE *making an* UNAUTHORISED INVESTMENT (*a*).

PARTIES, A., 1; B., 2: WHAS by virtue of an indre, &c. (being the settlemt exted on the marre of the sd A. with K. his psnt wife) the sum of £—— —— Stk (wch was at the date of the sale hinafter mentd standg in the name of the sd B. as the sole tree of the sd settlemt, was settled upon trust among other things that the sd B. shd eir continue the same in its existg state of investmt, or shd, with the Recitals. Marriage settlement.

(*a*) As to the right of the trustee to indemnity from the beneficiary in such a case, see the Trustee Act, 1888, s. 6; and as to the previous law, see Rudall and Greig on the Act, p. 20; Lewin on Trusts, p. 1042. As to the effect of a covenant of indemnity where the trustee is himself a beneficiary, see *Evans* v. *Benyon*, 37 Ch. D. 329. Right of trustee to indemnity.

Investment. consent of the sd A., sell the same, & invest the proceeds thof in any such stks, funds, or secs as are thrin mentd;

Breach of trust. And whas on the —— day of —— the sd B., at the reqt of the sd A., sold the sd —— Stk for the sum of £——, & invested such sum in the pchase of bonds of the Governmt of ——; And whas it is apprehended that such sale & investmt were not authorised by the sd settlemt, & were

Agreement. breaches of trust; And whas the sd A. has agrd to exte & give to the sd B. such covt of indemnity in respt of such sale & investmt as is hinafter contd: *Recite title of A. to* "the ppty mentd in the schdle hto" *subjt to certn prior chges;* And whas the sd A. has agrd to give to the sd B. such chge upon the sd ppty for the ppose of further securg such indemnity as afsd, as is hinafter contd: NOW THIS

Witnesseth. INDRE WITNETH, that in conson of the premes the sd A. hby covts with the sd B., his exs & ads, that the sd A.,

Covenant to indemnify. his hrs, exs, & ads, will at all times hrafter indemnify & keep indemnified the sd B., his hrs, exs, & ads, from all actions, pcdgs, claims, & demands, costs, damages, & expses on acct of the sd sale of the sd —— Stk, or the sd investmt in bonds of the Governmt of ——, or orwise in respt of the

Charge. premes; And the sd A. hby chges All the ppty mentd & descd in the schdle hto, & all the este & intt of him the sd A. in the same ppty & premes, & the rents, profits, & income thof (subjt to the incumbces hinbfe mentd), with the indemnity of the sd B., his exs & ads, psuant to the covt in that behalf hinbfe contd in respt of the mres refd to in or within the scope of such covt. In wits, &c.

[*Schdle.*]

XI.

BOND *by* LIMITED COMPANY *to* INDEMNIFY *their* MANAGING DIRECTOR *in respect of* GUARANTEES *given by him to the Company's* BANKERS *for* ADVANCES (*a*).

Obligon of Bond from the Co to A., p. 228.

WHAS the sd A., at the reqt of the Board of Dirors of the sd —— Co Limd (of wch he is managing diror), has signed or given, & may hrafter from time to time sign or give his promissory note or notes, or some other instrumt or instrumts to or in favour of Messrs. B. & Co. (the bankers of the sd Co) by way of guarantee or collateral secy for advces made, or to be from time to time made by the sd bank to or on acct of the sd Co, or for or in respt of other pecuniary accommodon to be from time to time afforded by the sd bank to the sd Co: AND WHAS the sd Co at the reqt of the sd A., & as an inducemt to him to undertake such psonal responsibility on behalf of the sd Co as afsd, have agrd to give him their bond in a sufft penalty for the ppose of indemnifying him in respt of the liability so assumed & to be assumed by him on behalf of the sd Co as afsd, in addon to any other remedy or secy to wch the sd A., his hrs, exs, or ads, may be or become entled as such surety or guarantor as afsd: NOW, &c., that if the sd Co shl on demand repay & make good to the sd A., his hrs, exs, or ads, all & every the sum & sums of moy wch he or they shl at any time or times hrafter pay to the sd bank, or any pson or psons whomsr by reason or in respt of any promissory note or notes, guarantee or guarantees, or other instrumt or instrumts already signed

Recitals.

Advances.

Agreement.

Condition.

(*a*) Compare Prec., p. 234; and as to securities by a company to indemnify the directors in respect of guarantees, see *Re Pyle Works*, (No. 2), [1891] 1 Ch. 173. A principal creditor is not entitled to the benefit of a security given by the principal debtor to a surety, *Re Walker*, [1892] 1 Ch. 621.

or given, or to be hrafter from time to time signed or given by the sd A., to or in favour of the sd bank, on acct of advces made, or to be made, or bills discounted or to be discounted by them to or on acct, or for the accommodon of the sd Co, or any other pecuniary accommodon wch may be afforded by them to the sd Co, & shl at all times hrafter keep the sd A., his hrs, exs, & ads, fully indemnified agst all actions, pcdgs, claims, demands, costs, & expses, by reason or in respt of any such promissory note or notes, guarantee or guarantees, or other instrumt or instrumts to be signed or given by the sd A. as afsd, & so that the above written bond or obligon shl be & remain a continuing secy to the sd A., his hrs, exs, & ads, in respt of the mres afsd, notwg any change in the ptners or members of the sd bkg firm, & shl not be deemed to be satisfied, or become inoperative, by reason of the cesson at any time of the guarantees given by the sd A. as afsd, but shl continue in force or revive in the event of any subseqt renewal thof, Then, &c.

XII.

DEED *of* INDEMNITY, *by a husband & wife, by way of Covenant and Charge, against using* NAME *as* CO-PLAINTIFF.

Recitals.

PARTIES, A. & B. his wife, 1; C., 2: WHAS the sd A. & B. his wife, on or about the —— day of ——, instituted an

Action commenced.

action in the —— Divon of the High Ct of Justice in the names of the sd A., B., & C., as plts agst D. as deft, & thby claimed specific pformce of a contract for the sale by the

Use of C.'s name.

plts to the dft of certn hds, known as the —— este; AND WHAS the name of the sd C. as such co-plt was used witht any express authority from him, but he is willg that his name shd be continued as such co-plt in the sd action, on

Title to property.

his being indemnified agst all consequential costs; AND WHAS the sd B. is entled, subjt to the sd contract for sale,

to the sd —— este in fee simple, & to the proceeds of the sale thof, for her sole & separate use: NOW THIS INDRE WITNETH that in conson of the premes each of them the sd A. & B. his wife, & as to the sd B. for the ppose of bindg all her existg & future separate este & ppty, & all ppty wch she has power so to bind, hby covts with the sd C., his exs & ads, that they the sd A. & B., & their respive hrs, exs, & ads, will at all times hrafter keep indemnified the sd C., his hrs, exs, & ads, agst all costs, damages, & expses to be incurred in conseqce of the sd action, or anything in anywise relatg thto: AND THE SD B. hby chges the sd —— este, & the proceeds of the sale thof, with the paymt to the sd C., his hrs, exs, & ads, of all such costs, damages, & expses as afsd. IN WITS, &c.

Witnesseth.

Covenant of indemnity.

Charge of property.

XIII.

BOND *of* INDEMNITY *on* PAYMENT *of* LOST BOND.

Obligon of bond from B. to A., p. 228.

Recital of bond from A. to B., p. 397: AND WHAS the sd bond is alleged to be lost or mislaid; AND WHAS the sd A. at the reqt of the sd B., has this day pd to him the sum of £—— in full satisfon of all claims under the sd bond (as the sd B. doth hby acknowe) upon the sd B. agreeing to exte to the sd A. a bond of indemnity in respt of the sd recited bond; NOW, &c., that if the sd B., his hrs, exs, or ads shl, in case the recited bond shl be found & shl be in or come into his or their posson or power, deliver the same to the sd A., his exs or ads, in order that the sd bond may be destroyed or cancelled, & shl at all times hrafter indemnify & keep indemnified the sd A., his hrs, exs, & ads, agst all damages, costs, expses, actions, pcdgs, claims, & demands, wch he or they may or might orwise at any time incur, or be liable to, under, or by reason of the sd recited bond, Then, &c.

Recitals.

Bond lost.

Agreement.

Condition.

LEASES (HOUSES, &c.) (*a*).

INTERPRETATION CLAUSE (*b*).

THIS INDRE, made, &c., betn A., of, &c., (hinafter called the lessor, wch expression shl include his hrs & assns,

(*a*) The forms under this head are for ordinary occupation and building leases and leases for business purposes. For agricultural and mining leases, see *infra*; and for variations for leases under powers and other special cases, see LEASES, MISCELLANEOUS. As to Stamps, see the Stamp Act, 1891, schedule tit. Lease.

Stamps.

(*b*) In accordance with the now very common practice the plan is adopted throughout the following forms of leases and agreements for leases of using the words "lessor" and "lessee," or "landlord" and "tenant," in place of the names of the parties, the former expressions being more commonly used in leases (though they are open to some objection on account of the risk of clerical errors which the similarity of the words involves), the latter in agreements for leases. These expressions may be made to include the reversioner and the termor for the time being respectively by an interpretation clause placed at the beginning or end of the instrument, so as to enable the words "heirs and assigns," or, "executors, administrators, and assigns," or other like words, to be omitted throughout in the case of both the lessor and the lessee.

As to use of words "lessor" and "lessee," &c., and interpretation clause.

By the Conv. Act, 1881, s. 10 (extending 32 Hen. 8, c. 34), the benefit of the rent and lessee's covenants and conditions in a lease is annexed to and to go with the reversion expectant on the term (notwithstanding severance of the reversion), and may be taken advantage of by the person from time to time entitled to the rents and profits of the land; and by s. 11 the obligation of the lessor's covenants, so far as he has power to bind the reversion, is annexed to and goes with the reversion (notwithstanding severance thereof), and may be enforced by the person in whom the term is from time to time vested (see as to the previous law the notes to *Spencer's Case*, 1 Smith's L. C. 72 *et seq.*); see also the general enactment in s. 58, making the benefit of covenants relating to land run with the land although the "heirs and assigns," or "executors, administrators, and assigns" (as the case may be) of the covenantee are not expressed, where it would so run if those words were expressed.

Benefit of lessee's and obligation of lessor's covenants annexed to reversion.

or, for an underlease, or a lease of chattels, "his exs, ads & assns," *or for a lease of any ppty under a power,* "the pson

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The effect of these enactments appears to be in all cases, whether the lease is granted by an owner or under a power, to carry the benefit and obligation of the lessor's covenants and the benefit of the lessee's covenants to the reversioner and lessee respectively for the time being, as the case may be, irrespective of the form of the covenants, and to prevent technical objections arising in future in this respect; but it may perhaps be still necessary that the lessee should covenant for his "assigns" in those cases in which this was previously necessary to make the obligation of his covenants run with the land (see the notes to *Spencer's Case*, 1 Sm. L. C. 72 *et seq.*), and also that the lessor should so covenant where his covenants are intended to bind future owners of adjoining land belonging to him; these cases not being covered by the above enactments. With these exceptions the repetition throughout of the words "and assigns" or "exs, ads, and assigns," or other like expressions, is superfluous so far as regards making the covenants run with the land; but sometimes (*e.g.*, in providing by and to whom notices or licences are to be given) the words appear to be required. The most convenient plan, which is adopted in this edition, is to imply these words by means of an interpretation clause, and they are therefore for the most part omitted throughout the following forms of leases and agreements for leases, except that at the commencement of the covenants the lessee, and also where appropriate the lessor, is made to covenant expressly "for his heirs, executors, administrators, and *assigns*." The mention of the "heirs, executors, and administrators" of the covenantor is unnecessary (see Conv. Act, 1881, s. 59), but it is thought preferable in the last mentioned instance to retain them.

Covenants for "assigns."

The above is a form of interpretation clause when placed at the commencement of the instrument, which is the better plan. A form of clause to be placed at the end will be found *infra*. The above forms defining "lessor" are not adapted to a lease by mortgagor and mortgagee, or by a mortgagor under a power in the mortgage or the Conv. Act, 1881, s. 18, since where the property is in mortgage it is usually intended that the mortgagor should act in all respects as the lessor until the mortgagee enters into the receipt of the rents or sells or forecloses (see as to this the Judicature Act, 1873, s. 25 (5)). In this case a special form of interpretation clause must be used; the most convenient plan seems to be to define the "lessor" as including "the pson or psons for the time being entld to rece the rent[s] hby reserved," care being taken to reserve the rents generally, not to "the lessor" expressly. This form might probably, in fact, be adopted as the common form for use in all cases.

Variation for property in mortgage.

For other forms of commencement adapted to various special cases, see *post*, LEASES, MISCELLANEOUS.

or psons from time to time entled to the revon of the premes hby demised expectant on the term hby grtd," (where the context so admits) of the one pt, & C., of, &c. (hinafter called the lessee, wch expression shl include his exs, ads, & assns, where the context so admits) of the other pt.

CONSIDERATION.

Rent and covenants.

I. In conson of the rents & covts, on the pt of the lessee, hinafter reserved & contd.

Premium and rent, &c.

II. In conson of the sum of £—— now pd by the lessee to the lessor (the rect whof is hby acknowed) & of the rents & covts, &c.

Surrender of former lease, &c.

III. In conson of the surrender of a former lease of the hds hby demised, dated, &c., & expd to be made betn, &c. (*a*), & of the rents & covts, &c.

PARCELS (*b*).

House in town.

I. All that messe or tenemt situate & known as No. —— in —— street, in the parish of ——, in the cty of ——, togr with the yard garden & outbldgs thto belonging, now or late in the occupon of ——.

House, &c. referring to plan.

II. All that pce of ground, situate, &c., with the messe or tenemt & bldgs erected on pt thof, wch premes are shown

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The following forms for leases of "Houses, &c.," and "Agricultural," are mostly for one lessor and one lessee. The alterations required for several will be in general merely the substitution of the plural number.

Surrender of old lease.

(*a*) The acceptance of a new lease would imply a surrender, so as to save the expense of an express surrender, where the new lease is of the same property to the same lessee: see Co. Lit. 338a; *Davison* d. *Bromley* v. *Stanley*, 4 Burr. 2210; *Lyon* v. *Reid*, 13 M. & W. 285, and see further as to implied surrenders, *infra*, p. 927, note. As to the power of limited owners to take the value of a surrendered lease into account on granting a new lease, see the Settled Land Act, 1882, s. 13, sub-ss. (1) & (5).

(*b*) See also the forms of parcels in Conveyances on Sale, p. 415 *et seq.*

on the plan drawn in the margin of these psnts & thrin coloured ——.

III. All that messe, &c., *or* "all those three rooms or offices nod, &c. on the —— floor of the bldg," No. ——, in —— street, &c., togr with the fixtures & fittgs specified in the schdle hto, & all other (if any) fixtures & fittgs belonging to the lessor in or upon the premes. House or offices with fixtures, &c.

IV. All that pce of land situate at, &c., on the —— side of the road leadg from, &c., & wch, as to its position, dimensions, & boundaries, is parlarly shown in the plan drawn in the margin of these psnts, & thrin coloured ——. Land referring to plan.

V. All that pce of ground situate & being on the north side of —— street, in the parish of ——, & cty of ——, containg in breadth on the south side or front thof next —— street afsd & on the north side or rear thof —— feet, & in length as well on the west as on the east side thof —— feet, be the same scvl dimensions little more or less, & wch sd pce of ground is bounded on the south by the sd street, on the north by land of, &c., &c. Togr with the messes & bldgs erected on the sd pce of ground, *or*, "togr with the messe or tenemt & other bldgs now built or in course of bldg or wch shl or may during the term hby grted, be erected or built on the sd pce of ground or any pt thof." Land and buildings with dimensions in feet.

VI. All that messe, &c., togr with the use in common with the other tenants of the lessor, *or*, "in common with the other psons entled thto," & under reasble regulons & restrons imposed by the lessor, of the ornamental garden in front of the sd messe & premes hby demised. House with use of public garden.

VII. Togr with the rt in common with the lessor, & the tenants or occupiers of the adjoing premes on the east side of the sd premes [*or*, in common with the other psons havg the like rt] to the use of the roadway or passage on the east side of the sd premes leadg from the public road or street called —— street to, &c., the lessee from time to time contributg a due proportion [accdg to the extent of his frontage], *or*, "an eql —— pt," of the expses of repairg & maintaing the sd roadway or passage. Right of way.

The same. Another form.

VIII. TOGR with the exclusive use & enjoymt for the lessee of the sd way or passage of the width of —— feet leadg from the yd or back pt of the sd demised premes into —— street afsd.

The same. Another form.

IX. TOGR with the free rt of passage at all times & for all pposes to & from the sd demised premes over the sd road or way leadg from, &c., & over all other neighbourg roads or ways belonging to the lessor.

Right of drainage.

X. TOGR with the free rt of passage & runng of water & soil from the sd demised premes through the sewer or drain runng under the sd road, &c. [all sewers, drains, & watercourses now or hrafter made or passg under or along any of the sd roads].

Right of light and air (*a*).

XI. TOGR with the rt to the free & uninterrupted access of light & air to the windows & openings now existg in the sd demised premes from over the houses & land of the lessor, situate on the east side thof.

GENERAL WORDS (*b*).

TOGR with all ways, passages, [lights], drains, sewers, watercourses, rts, easemts, & appurts, *or*, "the rts, easemts,

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(*a*) See *Potts* v. *Smith*, L. R. 6 Eq. 311.

As to general words.

(*b*) The insertion of general words in leases as well as other conveyances is rendered unnecessary by the Conv. Act, 1881, s. 6; see the definition of "conveyance" in s. 2; and as to general words, see above, p. 430, note, 1 Dart, V. & P., pp. 605—612. Questions under this head seldom arise except where the lessor has other adjoining property. As to when a quasi easement over other property of the lessor will pass as an "appurtenance," see *Thomas* v. *Owen*, 20 Q. B. D. 225. That the implication of a grant of an easement (such as light), over the lessor's other property, which is necessary to the full enjoyment of the demised property may be negatived by the circumstances, see *Birmingham, &c., Banking Co.* v. *Ross*, 38 Ch. D. 295. As to the right to support which is implied in a lease of building land, see *Rigby* v. *Bennett*, 21 Ch. D. 559.

As to all the estate clause.

By s. 63 of the Conv. Act, 1881, a "conveyance" (which by s. 2 includes a lease) passes "all the estate" of the conveying parties, unless a contrary intention is expressed, which it of course is in a lease by the habendum.

& appurts," to the sd premes belonging or thwith usually held or enjoyed.

RESERVATIONS (*c*).

I. EXCEPT & reservg unto the lessor (*c*) the free & uninterrupted passage & runng of water & soil from the other bldgs & land of the lessor (*c*), & his tenants, adjoing or near to the sd premes hby demised, through the sewers, drains, & watercourses, wch are now or may hrafter durg the term hby grted be in or under the sd demised premes. Right of drainage (*d*).

II. EXCEPT & reservg unto the lessor (*c*), the use at all times & for all pposes in common with the lessee, of the passage of the width of —— feet leading from &c. to &c. Right of way (*f*).

III. EXCEPT & reservg unto the lessor all timber & timber-like trees now standg or growg or hrafter to be standg or growg upon the sd demised land or any pt thof, & all mines, minls (*g*), & quarries, in, upon, or under the same, but witht power for the lessor to cut down or remove any such timber or trees, or to dig for or work such mines, minls, or quarries, except with the consent in writg of the lessee [*or*, with full Timber and minerals.

(*c*) See Elph. Introd. Conv. 223. As to reservations of easements, see *Lord Dynevor* v. *Tennant*, 13 App. Cas. 279. The reservation of a power to the lessor to enter and execute works under the Public Health Acts, or other like Acts, may sometimes be desirable; see *Parker* v. *Inge*, 17 Q. B. D. 584. As to the necessity for sometimes reserving rights required for use with adjoining property, see *Rigby* v. *Bennett*, 21 Ch. D. 559 (building land, digging foundations); *Martin* v. *Spicer*, 34 Ch. D. 1; 14 App. Cas. 12 (right of lessee to interfere with management of other property as to terms of letting). As to reservations.

(*d*) As to the extent of this reservation, see *Chadwick* v. *Marsden*, L. R. 2 Ex. 285.

(*e*) In an underlease, say, "lessor & the superior landlord of the sd premes."

(*f*) For other forms of reservations of rights of way, see p. 429, *et seq.*

(*g*) As to what is included in a reservation of minerals, see *Tucker* v. *Linger*, 8 App. Cas. 508.

power for the lessor to enter upon the sd demised premes, & to cut, dig, search for, work, quarry, & carry away the same, but not so as to interfere with the bldgs standg thron, or to occasion any unnecy damage to the lessee, & so that the lessee shl be fully compensated for all damage thby occasd].

General rights (*a*).

IV. SUBJT to all rts & easements belonging to any adjacent ppty.

Right to rebuild or alter adjacent buildings.

V. SUBJT to the rt wch is hby reserved to the lessor & his tenants at any time hrafter to rebuild or alter any of the adjoing or neighbourg bldgs accdg to such plans (whether as to height, extent, or orwise), & in such mner as shl be approved by the lessor's surveyor, notwg any interference thby occasd to the access of light or air to the premes thby demised.

HABENDUM.

Ordinary form.

I. To hold the premes hby demised unto the lessee from the —— day of ——, 18—, *or*, "from the day of the date of these psnts," *or*, "from the —— day of —— now last past," for the term of —— yrs [subjt to the sub-tenancies in the schdle hto mentd] *or*, "from yr to yr."

Partnership premises.

II. To hold the premes hby demised unto the lessees as jt tenants as pt of their co-ptnp este, from, &c.

REDDENDUM.

Reservation of rent (*b*).

I. PAYING therefor yrly durg the sd term hby grted, *or*, "the sd tenancy," & so in proportion for any less time than

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Reservation of easement.

(*a*) As to the circumstances under which a reservation to the lessor of an easement or right necessary to support a previous lease or grant of adjoining property to another person may be implied, see *Thomas* v. *Owen*, 20 Q. B. D. 225.

Distress.

(*b*) As to the power to distrain for rent, see the Law of Distress Amendment Act, 1888, 51 & 52 Vict. c. 21; and as to bankruptcy, see the

a yr (*c*), [unto the lessor (*d*)], the rent of £—— to be pd (*e*) witht any dedon (except for [land tax (*f*) &] landlord's ppty tax) by eql qtrly [half-yrly] paymts on the —— day of —— &c., *or*, "on the four usual qtr days," in every yr, the first of such paymts to be made on the —— day of —— next (*g*), [& the last paymt to be made in advce one calr month bfe the expiron of the sd tenancy or immedly on the determon thof in the event of the same being determined by re-entry under the provo in that behalf hinafter contd.]

II. PAYING, &c., *as above*, the rent of £—— to be pd in advce witht any dedon (except, &c.), by four eql qtrly paymts, the first of such paymts for the qtr endg on the —— day of —— next to be made on the exon of these

Rent payable in advance.

Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, s. 42, as altered by the Bankruptcy Act, 1890, 53 & 54 Vict. c. 71, s. 28; and as to companies in liquidation, see the Companies Act, 1862, s. 163. As to Agricultural Holdings, see the Agricultural Holdings (England) Act, 1883, 46 & 47 Vict. c. 61, Part II., as altered by 51 & 52 Vict. c. 21.

(*c*) When these words are inserted it is unnecessary to insert form No. VI., *post*. As to the apportionment of the liability to the rent where the lease is assigned between two rent days, see *Swansea Bank* v. *Thomas*, 4 Ex. D. 94.

(*d*) It is sufficient to reserve the rent generally without specifying to whom; this was so before the Conv. Act, 1881 (see Elph. Introd. Conv., 227), and now by that Act, s. 10, the rent reserved by a lease is in all cases expressly annexed to the reversion, see above, p. 734, note. As to the case where the reversion is in mortgage, see the Judic. Act, 1873, s. 25 (5). The words in brackets may therefore be omitted, and in the case of a lease under a power or by several lessors having various interests, it is better to do so, unless "lessor" is defined to include the reversioner or reversioners for the time being, see p. 735, note.

Reservation of rent. Effect of Conv. Act, 1881.

(*e*) If several rents are reserved, say, "all wch rents or sums hinbfe reserved or made payable as rent shl be pd, &c."

(*f*) As to the right to deduct land tax, see *Andrew* v. *Hancock*, 1 B. & B. 37. A provision that the tenant may deduct the tithe rent-charge is now unnecessary and out of place, as the tithe is under the Tithe Act, 1891, 54 Vict. c. 8, s. 1, leviable against the landlord and not the tenant, and any contract made after the Act making it payable by the tenant is void.

As to land tax and tithe.

(*g*) If the lease is not executed till after its commencement and some rent has already become due and been paid, say, "the first of such paymts after the date of these psnts in respt of the now cur-

As to rent already paid.

psnts, & the subseqt paymts to be made in advce for each qtr on the —— day of —— &c.

Varying rent (*a*).

III. PAYING, &c., the respive rents follg (that is to say), durg the first & second yrs of the sd term the yrly rent of £——, & durg [the next —— yrs of the sd term the yrly rent of £—— & durg] every subseqt yr of the sd term the yrly rent of £——, such respive rents to be pd witht any dedon (except, &c.) by eql qtrly [half-yrly] paymts, &c.

Peppercorn rent.

IV. PAYING, &c., durg the first —— yrs of the sd term the rent of a peppercorn if demanded, & durg the residue of the sd term the yrly rent of £——, such last-mentd rent to be pd witht any dedon (except, &c.) by eql qtrly [half-yrly] paymts, on &c., & the first paymt thof to be made on, &c.

Separate rent for each house in lease of several houses.

V. PAYING, &c., the rent of £—— for each of the sd six messes hby demised, makg an aggregate yrly rent of £—— for all the sd messes & premes, to be pd, &c.

Proportionate rent on term ceasing by re entry or notice.

VI. AND also payg in the event of the sd term being determined betn two of the sd qtrly [half-yrly] days by re-entry [or notice] under the provo [respive provoes] in that behalf hinafter contd, a proportionate pt of the sd rent for the fraction of the current qtr [half-yr] forthwith on such determon (*b*).

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rent half yr [qtr] to be made on the —— day of —— next, or add: "Provd that the rent already pd by the lessee in respt of his occupon of the premes since the —— day of —— shl be in satisfon as far as the same extends of the rent already accrued due under this demise."

As to varying rent in lease under power.

(*a*) Where the lease is of settled land under a power (express or statutory) requiring the best rent to be reserved, an increasing rent cannot be reserved unless expressly authorised (*Re Hallett*, 24 Ch. D. 624), the objection being that if the next remainderman is a tenant for life, this might operate to his prejudice; and *à fortiori* a diminishing or fluctuating rent would be bad. In the case of building leases a peppercorn rent, or other rent less than the full rent, may be reserved during the first five years or any part thereof, under the Settled Land Act, 1882, s. 8 (2); but even in that case it seems doubtful, having regard to s. 53, whether the peppercorn rent must not be reserved if at all at the *commencement* of the five years.

(*b*) See the Apportionment Act, 1870, 33 & 34 Vict. c. 35, ss. 2 & 3.

VII. And also payg by way of further or addonal rent from time to time a sum or sums of moy eql to the amt wch the lessor may expend in effectuatg or maintaing the insce of the sd premes agst loss or damage by fire [or accident] as hinafter mentd; such last-mentd rent to be pd witht any dedon on the qtrly [half-yrly] day for paymt of rent next ensuing after the expenditure thof. Insurance rent (c).

VIII. And also if & so often as the lessee shl, contrary to his covts in that behalf hinafter contd, *here specify breaches of covt to be guarded agst*, then & in any & every such case payg durg the then residue of the term hby grted as a further rent the yrly sum of £——, every such addonal rent to commce from the day on wch the breach of covt in respt whof the same is payable as afsd shl happen, & to be payable thenceforth qtrly [half-yrly] witht dedon in the same mner as the sd origl rent of £——. Penal rent on breach of covenant (d).

IX. And also as a further rent the sum of £—— in any & every *week* in wch the lessee shl break or fail to pform or observe any of the covts & condons hinafter contd & on his pt to be pformed or observed, such last mentd rent to commce on the day on wch such breach, non-pformce, or non-observce shl first happen, & to continue payable until the lessee shl specifically pform or observe & pay full damages & compenson to the satisfon of the lessor for the Penal rent in respect of any breach of covenant.

(c) This is probably effectual as a means of obtaining the right of distress, being as it seems not affected by the Bills of Sale Acts.

(d) It used to be considered that on payment of the increased rent the lessee was at liberty to do the act on which it became payable, so as to prevent the landlord from entering for breach of covenant; but where, as in the text, the acts in question are treated in the reddendum as breaches of covenant, it is now decided that the effect is to give alternative remedies to the lessor either by ejectment for breach of covenant, or injunction or recovery of the penal rent: *Weston* v. *Managers of the Metropolitan Asylums District*, 8 Q. B. D. 387; 9 Q. B. D. 404; see Elph. N. & C. Interp. Deeds, pp. 430 *et seq.* Possibly the reservation of penal rents may become more common now that the lessor's power of re-entry for breach of covenant is restricted by the Conv. Act, 1881, s. 14; see 26 Sol. J. 489. No additional stamp is required in respect of a penal rent, see the Stamp Act, 1891, s. 77 (1). As to penal rents.

breach, non-pformce or non-observce of any of such covts or condons, such last-mentd rent to be pd *weekly* witht any dedon.

LESSEE'S COVENANTS.

Commencement.

I. And the lessee doth hby for himself, his hrs, exs, ads, & assns, covt with the lessor (*a*), in mner follg, that is to say:—

The same for several lessees (*b*).

II. And the lessees do hby for themselves, their hrs, exs, ads, & assns [& as a separate covt each of them doth hby for himself, his hrs, exs, ads, & assns] covt with the lessor in mner follg, that is to say:—

To pay rent.

III. That the lessee will, durg the continuce of the term hby grted, pay unto the lessor (*c*) the sd yrly rent [respive yrly & other rents or sums of moy] hinbfe reserved & made payable at the times & in the mner at & in wch the same is [are resply] hinbfe reserved & made payable witht any dedon (except as afsd).

To pay rates and taxes (*d*).

IV. And also will from time to time, & at all times durg the sd term, pay & dischge all rates, taxes, chges, assessmts, & outgoings whatsr, whether parliamentary, parochial, local, or of any other descripon, wch are now or may at any time hrafter be assessed, chged, or imposed upon the sd

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(*a*) As to the statutory enactments making the benefit and burden of the lessee's covenants run with the land, and the wording of the covenant, see p. 734, note. As to the frame of the covenants to be entered into by the executors of a person who has agreed to take a lease, but died before completion, see *Stephens* v. *Hotham*, 1 K. & J. 571.

(*b*) In a lease to several, whether as joint tenants or in common, it should be clearly expressed whether they are to be liable severally as well as jointly; as to the law on this subject, see *White* v. *Tyndall*, 13 App. Cas. 263; Elph. N. & C. Interp. Deeds, p. 434.

(*c*) The words "unto the lessor," are unnecessary, and perhaps better omitted; see p. 734, note (*b*).

As to drainage

(*d*) This covenant includes charges for drainage, paving, &c., imposed by local authorities under the Public Health or Metropolis Management

demised premes, or the owner or occupier in respt thof, the [land tax (*e*) &] landlord's ppty tax only excepted.

To paint outside every three years.

v. And also will [in the yr —— & thrafter] once in every three yrs of the sd term [& also durg the last yr thof] (*f*) paint the outside wood & iron [& stucco or cement] work of the sd demised premes [& any addonal bldgs wch may at any time durg the sd term be erected thron, *or*, "& all addons thto" (*g*)] with two coats of good oil & white-lead paint in a pper & workmanlike mner.

To paint inside every seven years.

vi. And also will [in the yr —— & thrafter] once in every seven yrs of the sd term [& also durg the last yr thof] paint all the inside wood & iron work usually painted of the sd demised premes [& any such addonal bldgs as afsd, *or*, "& all addons thto" (*g*)] with three coats of good oil & white-lead paint in a pper & workmanlike mner (*h*).

Acts, *Budd* v. *Marshall*, 5 C. P. D. 481; *Aldridge* v. *Ferne*, 17 Q. B. D. 212; *Batchelor* v. *Bigger*, 60 L. T. 416; W. N. 1889, 51; *Smith* v. *Robinson*, [1893] 2 Q. B. 53; in a short tenancy therefore, they should be excluded by excepting "any sums recoverable from the lessor by any local or other public authority under the provisions of the Public Health Acts," or as the case may be; see *Allum* v. *Dickinson*, 9 Q. B. D. 632; *Wilkinson* v. *Collyer*, 13 Q. B. D. 1, where the form of the covenant was different; *Re Crawley*, 28 Ch. D. 431. Such a covenant by the landlord does not include water rate, *Badcock* v. *Hunt*, 22 Q. B. D. 145. and paving charges.

(*e*) As to tithe, see p. 741, note (*f*).

Variations as to outside painting, &c.

(*f*) The following addition may occasionally be proper here:—"at the same time as & so as to correspond with the adjoing houses:" or "in such month as shl be from time to time appted by the lessor in that behalf;" and the following may sometimes be added at the end of the covenant:—"& of a tint or colour to be approved by the lessor, & recolour in imiton of stone the outside stucco or cement work, & once in every seven yrs of the sd term clean & repoint the external stone & brickwork of the premes."

(*g*) As to the importance of the words in brackets, see *Cornish* v. *Cliffe*, 3 H. & C. 446.

Addition to covenant to paint.

(*h*) The following addition may sometimes be proper:—"& aftwds grain, marble, & varnish the pts usually grained, marbled, & varnished, & also wash, distemper, & whiten all ceilgs, &

To paint inside and out when required.

VII. AND also will paint with two coats of good oil colour all the inside & outside wood & iron work of the sd premes [& all addons thto (*a*)] as often as the same shl be required.

Short form.

To keep in repair, with variations.

VIII. AND also will from time to time, & at all times durg the sd term, well & substantially repair, cleanse, maintain, amend, & keep the sd messe & bldgs & [all new bldgs wch may at any time durg the sd term be erected on & all addons made to the sd demised (*a*)] premes, & the fixtures thrin, & the walls, fences, vaults [roads, sewers], drains, & appurts thof with all necy reparons, cleansings, & amendmts whatsr (*b*).

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colour all walls, and re-paper the rooms & staircase, & size & varnish the staircase paper in the usual mner."

(*a*) See note (*g*) on last page.

(*b*) The following addition may sometimes be desirable:—"And also will when & so often as any fixtures belonging to the premes shl so require, substitute other fixtures of a similar description & value to the satisfon of the surveyor of the lessor." The covenant may sometimes require to be qualified by adding:—"except substantial repairs to the main walls, roof, foundons, & main drains," or, "except such repairs as are hby agrd to be exted by the lessor," or, "except in case of destron or damage by fire." In cases where the property is in a defective state it may be well, if so intended, to insert the following qualification:—"except such defective portions of the sd premes as are mentd in the schdle hto, wch it shl not be incumbent on the lessee to keep or deliver up in a better state of repair than at psnt;" or a proviso that, "the covt hinbfe contd for the repair of the sd premes shl not render it incumbent upon the lessee to keep or deliver up the sd premes or any pt thof in a better state of repair or condon than the same are in at psnt."

Qualifications of covenant to repair.

As to effect of covenant in lease of old house.

The principles governing the construction of the ordinary repairing covenants in leases, such as a covenant to keep in "tenantable repair," or (which is substantially the same thing) in "good repair," were considered, and the prior cases discussed, in *Proudfoot* v. *Hart*, 25 Q. B. D. 42, by the Court of Appeal, by whom the law was laid down (in a manner differing materially from the rules enunciated in the Court below) to the effect, which seems reasonable, that the lessee under such a covenant is bound to keep the house in and if need be put it into such repair as

IX. And also will durg the sd term keep all the sd premes & the fixtures, paintg, paperg & decorations thof in good & tenantable repair, order & condon internally & externally. The same. Short form.

X. And also will at all times durg the sd term maintain the gardens & pleasure-grounds of the sd premes in good order, & pperly planted, & carefully preserve the timber-trees, & all ornamental & fruit trees, bushes & shrubs, wch are now or may at any time durg the sd term be growg on the sd premes, & replace such of the shrubs & plants as may die, or require replacg. To maintain gardens and pleasure grounds, &c.

XI. And also will exte all such works as are or may under or in psuance of any act or acts of Parliamt already passed or hrafter to be passed be directed or required by any local or public authority to be exted at any time durg the sd term upon or in respt of the sd demised premes whether by the landlord or tenant thof. To execute works required by local authority.

XII. And also will at all times durg the sd term [pay & To pay proportion of

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makes it reasonably fit for occupation by the class of tenants who would be likely to take it, regard being had to its age and character, although this may involve putting an old house into better repair than it was in at the commencement of the lease, even to the extent of having to renew any part which is past repair; but if the house can be made fit for such occupation by merely patching up defects, the tenant is not bound to do more. In *Lister* v. *Lane*, [1893] 2 Q. B. 212, it was held by the Court of Appeal that if the defect is an inherent one caused by original faulty construction, the lessee would not be liable to make it good under such a covenant. See also as to "tenantable repair," *Crawford* v. *Newton*, 2 Times' L. R. 877; and as to the measure of damages for breach of a covenant to repair, *Morgan* v. *Hardy*, 17 Q. B. D. 770; *Henderson* v. *Thorn*, [1893] 2 Q. B. 164.

The qualification "fair and reasonable wear and tear excepted" is occasionally required, and frequently finds its way even into repairing leases, but as it goes far to nullify the covenant, it is obviously contrary to the intention in that case, and the practitioner should be cautioned against allowing its insertion. In *Davies* v. *Davies*, 38 Ch. D. 499, it was held that a tenant for years is liable for permissive waste, and that where a lease is granted under a power requiring that the lessee should not be made unimpeachable for waste, the introduction into the repairing covenant of an exception of "fair wear and tear and damage by tempest," invalidates the lease. This would seem to apply equally to the ordinary agreement for a yearly tenancy. But a lease may be granted under the Settled Land Act, 1882, s. 6, although "involving waste," and would therefore not be open to this objection. As to excepting fair wear and tear.

expense of maintaining roads, sewers, &c.

contribute a rateable or due proportion of the expses] *or*, "bear & pay all costs & expses payable eir by landlord or tenant in respt of the premes hby demised," of makg, repairg, maintaing, rebldg, & cleansg all ways, roads, pavemts, sewers, drains, pipes, water-courses, pty-walls, pty structures, fences, or other convenices, wch shl belong to or be used for the sd premes hby demised [or any addonal bldgs wch may be erected as afsd] in common with other premes near or adjoing thto, such proportion [in case of diffce to be settled by the surveyor for the time being of the lessor, whose decision shl be final, &] to be pd to the lessor on demand (*a*), & will keep the lessor indemnified agst all such costs & expses as afsd.

To contribute towards keeping up ornamental garden or enclosure.

XIII. AND also will pay to the lessor the yrly sum of £—— towards the expse, *or*, "a due proportion with the owners & occupiers of the other messes fronting the garden & planton hinafter mentd (such proportion to be assessed by the surveyor for the time being of the lessor) of the expse," of keeping the garden & planton in the centre of the sd square in good order & condon, & repairg & paintg the curb & iron railgs surroundg the same, until the lessor shl give notice in writg that he will cease to keep up the same garden or planton as afsd, & the contribon of the lessee towards such expse as afsd shl be payable to the lessor yrly on the —— day of —— togr with the rent hby reserved (*a*); & upon such notice as last afsd being given by the lessor, & thenceforward durg the continuce of the term hby grted, the lessee will, jtly with the lessees & occupiers of the other messes frontg the sd garden & planton, maintain the same in good order, & supply the same with fresh

As to power of distress.

(*a*) It has been common, in this and similar cases, to add, "& to be recoverable by distress or orwise in like mner as rent in arrear;" but this is invalidated by the Bills of Sale Acts, 1878 and 1882 (see ss. 4 and 6 of the former Act, and *Pulbrook* v. *Ashby*, 56 L. J. N. S., Q. B. D. 376; 35 W. R. 779); and is therefore omitted. Possibly an implied right of distress might be created by reserving the money as extra rent, as in the case of insurance rent (see above p. 743, form VII.), but this seems doubtful.

flowers, plants, & shrubs, & repair & paint the curb & iron railg surroundg the sd garden, in all respts to the satisfon of the lessor, or his surveyor or agent.

To deliver up at end of tenancy in good repair.

XIV. And the sd demised premes so painted, repaired, cleansed, maintained, amended, & kept as afsd will, at the expiron or sooner determinon of the sd term, quietly yield up unto the lessor, togr with all addons & improvemts made thto in the meantime, & all fixtures (*b*) of every kind in or upon the sd premes, or wch (*c*) durg the sd term may be affixed or fastened to or upon the same [except tenant's or trade fixtures].

The same. Short form.

XV. And will at the determinon of the sd tenancy quietly yield up the sd premes with the fixtures wch now are, or at any time durg the sd tenancy shl be thron in a good & tenantable state of repair & condon [except as afsd, *see above, note to form* VIII].

To permit lessor to enter and view premises, and to repair on notice.

XVI. And also that it shl be lful for the lessor, or his agents (*d*) twice or oftener in every yr durg the sd term, durg seasonable hours in the day time, with or witht workmen or others, to enter the sd premes to view the state of repair & condon of the same, & of all defects & wants of reparon then & there found [& wch the lessee shl be liable to make good under the covts hinbfe contd], to give or leave on the sd premes notice in writg to the lessee: And that the lessee will within the space of three calr months after such notice, or sooner if requisite, repair & make good the same accdg to such notice & the covt in that behalf hinbfe contd.

The same. Short form.

XVII. And also will permit the landlord [or superior landlord], or his agents at any time to enter the sd premes, &

(*b*) See Elph. Introd. Conv., 238. A schedule of the landlord's fixtures may be annexed to the lease.

(*c*) In a long lease this is usually qualified by saying, "or wch at the expiron of the sd term, or at any time durg the last *seven* yrs thof may be affixed, &c."

(*d*) In an underlease say, "the lessor & the superior landlord of the sd premes or their respive agents."

examine the state of repair & condon thof: And will repair & make good all defects, of which notice in writg shl be given by the landlord [or superior landlord] to the tenant, within three calr months after the giving of such notice.

Power to lessor to repair on default of lessee (*a*).

XVIII. And also that if the lessee shl at any time make default in the pformce of any of the covts hinbfe contd for or relatg to the repair of the sd premes, it shl be lful for the lessor (but witht prejudice to the rt of re-entry under the clause hinafter contd), to enter upon the sd premes, & repair the same at the expse of the lessee, in accdce with the covts & provons of these psnts, & the expses of such repairs shl be repd by the lessee to the lessor on demand (*b*).

Power to lessor to enter to take inventories of fixtures.

XIX. And also will permit the lessor (*c*) or his surveyor or agent at any time or times durg (*d*) the sd term to enter the sd premes or any pt thof durg seasonable hours in the day time, & to take schdles or inventories of the fixtures & things to be yielded up at the expiron of the sd term.

Power to lessor to enter to repair adjoining premises.

XX. And also that it shl be lful for the lessor (*c*) or his agents or workmen, & for the tenants & occupiers of the adjoing messes at any time durg the sd term at seasonable hours in the day time to enter upon the premes hby demised for executg repairs or alterons of or upon such adjoing premes, makg good to the lessee all damage thby occasd.

To permit lessor before end of

XXI. And also that it shl be lful for the lessor, or his agents, at any time within three calr months next bfe the

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(*a*) The landlord would have no such right without express authority, Woodfall, L. & T., p. 634. The acting on this power might, but for the provision to the contrary, be held to be a waiver of the right of re-entry for breach of the covenant to repair, see *Doe* v. *Lewis*, 5 Ad. & E. 277.

(*b*) See p. 748, note (*a*).

(*c*) In an underlease, if there is a similar covenant in the head lease, say, "the lessor or the superior landlord, or their respive, &c."

(*d*) In a long lease say, "durg the last *seven* yrs of the sd term."

expiron or sooner determinon of the sd term, to enter upon the sd premes, & to affix upon any suitable pt thof a notice-board for relettg the same, & that the lessee will not remove or obscure the same, & will permit all psons by order in writg of the lessor, or his agents, to view the sd premes at seasonable hours in the daytime witht interruption. Lease to put up notice for re-letting, &c.

XXII. And also will repay to the lessor all sums wch he shl expend [in psuance of the covt of the lessor hinafter contd] for insurg the sd messe, bldgs, & premes agst fire [or accident], every such sum to be so repd on the qtrly [half-yrly] day for paymt of rent under this demise next ensug after the expenditure thof (*e*). To repay to lessor sums paid for insuring.

XXIII. And also will forthwith insure (*f*) & at all times durg the sd term keep insured agst loss or damage by fire the sd messe, & all bldgs, erons, & fixtures of an insurable nature, wch at any time durg the sd term may be erected or placed upon or affixed to the sd demised premes, in the sum of £—— at the least, *or*, "to three fourth pts of the value thof at the least," *or*, "to the full value thof," [such value to be determined by the surveyor for the time being of the lessor,] in the —— Insce Office, or in some other office of repute to be approved [prescribed] in writg by the lessor (*g*), in the name of the lessor, *or*, "in the jt names of the lessor & lessee," [or in such other name or names as the lessor shl from time to time prescribe]: And will, whenever required, produce to the lessor, or his agent, the policy of To insure and rebuild in case of fire.

(*e*) It might be better to reserve the insurance money as extra rent, see form VII., p. 743.

(*f*) In an underlease, the covenant must be in accordance with that in the head lease as to the sum assured, and the office and names in which the insurance is to be effected. As to the covenant to insure, see 5 Dav. Prec., Part I., p. 542, note; Elph., Introd. Conv. 234.

(*g*) Where plate-glass windows are to be insured, add here, "& also insure & keep insured agst loss or damage by accident all plate-glass windows in the demised premes to the full value thof in the —— Insce Office, or in some other office of repute to be approved [prescribed] as afsd." Variations for insurance of windows against accident.

every such insce, & the rect for the last premium thof, [and that in default thof the lessor may insure the sd premes in mner afsd & pay the premiums payable in respt thof, & that the premiums so pd & all incidental expses shl be repd by the lessee to the lessor on demand (*a*). And that, in case the sd messe, bldgs, & premes, or any pt thof shl at any time durg the sd term be destroyed or damaged by fire (*b*), then, & as often as the same shl happen, all moys recd in respt of such insce (*c*) shl with all convenient speed be laid out in rebldg, repairg, or orwise reinstatg the same premes in a good & substantial mner [& under the diron of the surveyor of the lessor] [accdg to the psnt plan & elevon (*d*), or in such other mner as shl be previously approved of in writg by the lessor], & in case the moys recd in respt of the sd insce shl be insufft for that ppose, will make good the deficiency out of his own moys.

The same. Short form.

XXIV. And will, durg the sd term, keep the sd messe, bldgs, & premes hby demised insured agst fire in some responsible office in the sum of £—— at the least in the jt names of the lessor & lessee, & whenever required produce to the lessor the policy & rect for the last premium in respt of such insce, & that in case of the destron or damage of the sd premes by fire the moys receed in respt of such insce shl be laid out in rebldg or reinstatg the same, & in case such moys shl be insufft for such ppose the deficiency shl be made good by the lessee.

(*a*) See p. 748, note (*d*).

(*b*) For plate-glass windows, add here, "or in case the sd plate-glass windows or any of them shl be destroyed or damaged by accident."

(*c*) As to the right to require insurance monies to be laid out in reinstating the premises in the absence of special contract, see 14 Geo. 3, c. 78, s. 83; *Ex p. Gorely*, 4 De G. J. & S. 477; *Westminster Fire Office* v. *Glasgow, &c., Society*, 13 App. Cas. 699, *ante*, p. 295, note.

(*d*) For plate-glass windows, add here, "& as to the sd plate-glass windows, with glass of the same nature, quality, & thickness as at psnt."

Not to do anything to increase rate of insurance.

XXV. AND also will not carry on or permit upon the sd premes any trade or occupon, or do or suffer any other thing wch may render any increased or extra premium payable for the insce of the premes agst fire, or wch may make void or voidable any policy for such insce.

If rate of insurance is increased, to give notice to lessor.

XXVI. AND also, if at any time durg the sd term any trade or occupon shl be carried on, or anything shl be done upon the premes, wch shl cause the premium to be chged by any such insce office as afsd to exceed the rate of —— p.c., will give notice thof unto the lessor, & will also pay the extra premium so to be chged as afsd.

To build or finish a house, with variations (*e*).

XXVII. AND also will, under the inspon & to the satisfon of the surveyor for the time being of the lessor, & in accordce with the plans, elevons, & specificons already, *or*, "to be," approved by him, [build & construct on the sd pce of land hby demised, one villa residce or dwellg-house of the cost value of at least £——, *or*, "of the yrly lettg value of at least *five* times the rent hby reserved (*f*)"] [*or*, *if partially built*, complete & finish the messe, bldgs, & erons, hby demised], with offices & outbldgs thto annexed, & all necy & suitable fences, roads, foot-pavemts, ways, drains, & other works in common thwith, And will complete the same fit for habiton & use bfe the —— day of ——, unless prevented by fire, stress of weather, or strikes or combinons of workmen: [And also will by means of vouchers or other reasble evidce when required, on or bfe the —— day of ——, satisfy the sd surveyor that the sum of £—— has been expended on the sd bldgs & works], [And also will pay & dischge the reasble fees & chges of such surveyor].

To face buildings so as to

XXVIII. AND also that every bldg to be erected upon the sd plot of land hby demised shl be faced on the side frontg

(*e*) For various covenants as to building which can readily be adapted to a lease, see p. 315, *et seq.* As to the necessity for this covenant where the lease is under a power, see *Re Hallett*, 24 Ch. D. 624; *Re Chawner*, [1892] 2 Ch. 192.

(*f*) There is no ad valorem duty on the value of buildings to be erected; see the Stamp Act, 1891, s. 77 (2).

increase light to adjoining property.

towards —— Ct afsd with white glazed bricks or tiles or with stucco or cement painted white or a light stone colour, & if faced with glazed bricks or tiles shl be kept thoroughly cleaned, or if faced with stucco or cement shl be repainted in a workmanlike mner with two coats of good oil paint once at least in every three yrs of the sd term.

Not to erect other buildings.

XXIX. And also will not at any time durg the sd term witht the consent in writg of the lessor first obtained erect or place any addonal bldg or eron on any pt of the demised premes [other than a stable & coach-house, entrance-lodge, gardener's cottage, greenhouses & summer-houses, or other similar out-bldgs suitable for the convenience of the occupiers of, & to be used as appurtenant to, the sd messe hby demised, & for no other ppose].

Not to make alterations in premises, &c., with variations.

XXX. And also will not at any time durg the sd term, witht the licence in writg of the lessor first obtained, erect any new bldgs on the premes hby demised [except as afsd] or make any alteron or addon whatsr in or to the sd messes & premes hby demised or any bldgs wch may be erected on the sd premes [psuant to the provons hinbfe contd, or] with such licence as afsd, eir externally or internally, [*or*, make any alteron in the plan, external constron, height, roof, walls, timbers, elevon, architectural appearce, or decorons of the sd messe & premes, or any bldgs, &c., *as above*, nor build or set up any eron or projon of any kind in the garden or yard in the front or rear of the sd messe or on any pt of the sd premes wch shl destroy or interfere with the uniformity of the sd premes with the adjoing houses, or wch may in any way obstruct or lessen the access of light or air to or interrupt the view from the adjoing houses or bldgs], [& that, in case at any time durg the sd term there shl be occasion to rebuild the sd messe & bldgs, or any pt thof, whether by reason of destron by fire or through decay, or from any other cause, the same shall be rebuilt accdg to the origl plan & elevons thof, or accdg to such other plan as shl be previously approved of in writg by the lessor, & not orwise].

To obtain lessor's approval before altering premises.

XXXI. And also, bfe makg any alterons in the sd messe, or the outbldgs thof, or erectg any other bldgs on the sd demised premes or any pt thof, will obtain the approval in writg of the lessor to the plans & specificons of such intd alterons or bldgs, & make or erect the same in such mner as shl be so approved.

Not to cut main walls.

XXXII. And also will not at any time cut, maim, or remove the main walls or timbers of the sd premes, unless for the ppose of supplyg & makg good any defect thrin, wch shl be supplied & made good accdly.

Not to commit waste.

XXXIII. And also will not at any time durg the sd term witht the consent in writg of the lessor, cut down or destroy any timber or timberlike trees now or hrafter standg or growg on the sd premes, or open, work, or dig for any mines, minls, quarries, clay, gravel, or sand, in, upon, or under the same, but will to the utmost of his power keep the sd timber & trees in good preservon, & the sd mines, minls, quarries, &c., unopened & unworked.

Not to use premises for trade, &c., with variations.

XXXIV. And also will not use the sd premes, or permit (*a*) the same to be used for the ppses of any trade, manufacture or business (*b*) of any descripon [or for burning bricks, clay, or refuse, or for puttg out clothg or other articles to dry or bleach], or as an asylum for lunatics or idiots, hospital or other charitable institon, or by any public body or society, or for any school, or teachg of music, or as a tea-garden, or hotel, or tavern, or for the sale of beer, wine, or spirits (*c*), & will not hang, place, or deposit any goods or things for sale or orwise outside of any pt of the premes, or in, upon, or over, the yard, garden, or area thof, nor exhibit or permit in, upon, or about the sd premes any bill or placard intimatg or givg notice that a pt of the sd premes (less than the whole) is to let furnished or unfurnished, nor put up, or permit, in or upon any pt of the

(*a*) As to what is "permitting," see *Hall* v. *Ewin*, 37 Ch. D. 74.

(*b*) As to what is a "business," see *Rolls* v. *Miller*, 27 Ch. D. 71 (Charitable Institution).

(*c*) See *Buckle* v. *Fredericks*, 34 Sol. J. 362.

sd premes, any bill, notice, door-plate, or advertisemt, or any outward mark or show of business (*a*), nor at any time have or permit any sale by auction, exhibon, or public meetg, to be held in or upon the sd premes witht the consent in writg of the lessor.

To use as private dwelling-house only (*b*).

XXXV. AND also will use & occupy the sd messe as a private dwg-house only [& the sd coach-house & stable as a private coach-house & stable, & the rooms over the same for the lodgg of servants or others in the employmt of the lessee], & for no other ppose, [& that if the premes are occupied by a medical man he shl not rece lunatics or other patients to reside in the house, nor have any dispensary or shop for dispensg or sellg medicines on the premes], *or*, [that every bldg erected on the land hby demised shl be used only as a private dwg-house or a coach-house, stable, or other outbldg belonging thto, & that so much of the sd land as shl remain unbuilt upon shl be used only as the yards, gardens, or pleasure-grounds of such dwg-house & premes].

To use as offices only.

XXXVI. AND also will not use or occupy the sd premes, or permit the same to be used or occupied orwise than as offices, or for any ppose, or in any mner inconsistent with such user or occupon, nor so as to be a nuisce, annoyce, or damage to the owners or occupiers of the other offices or rooms in the same house, or the adjoing houses.

Not to carry on offensive trades, &c. (*c*).

XXXVII. AND also will not carry on or permit upon the sd premes, or any pt thof, any offensive, noisy, or dangerous trade, business, manufacture, or occupon, or any nuisce, nor use the same, nor allow the same to be used for any illegal or immoral ppose, but will use the same as a private dwg-house, or for carryg on handicrafts or occupons of a quiet & inoffensive nature only.

Not to do any act to

XXXVIII. AND also will not do or suffer to be done, in or

(*a*) See *Evans* v. *Davis*, 27 W. R. 285.

(*b*) See *German* v. *Chapman*, 7 Ch. D. 271; see other forms, p. 318 *et seq.*

(*c*) See also pp. 318, 320, forms *f* (1)—(7).

upon the sd premes, or any pt thof, any act, or thing, wch shl or may be, or become a nuisce (*d*), damage, annoyce, or inconvenience to the lessor (*e*), or his tenants, or the occupiers of any of the adjoing houses, or the neighbourhood. the damage or annoyance of the lessor, or his tenants, &c.

XXXIX. AND also will not stop up, darken, or obstruct any windows or lights belonging to the sd bldgs hby demised, or any adjoing bldgs belonging to the lessor (*e*), nor permit any new window, light, openg, doorway, path, passage, drain, or other encroachmt or easemt to be made into, agst, or upon, the sd premes hby demised, wch might be, or grow to the damage, annoyce or inconvenience of the lessor (*e*). And in case any such window, &c., shl be made, or attempted to be made, will give immediate notice thof to the lessor, & will at the reqt & cost of the lessor, adopt such means as may be reasbly required or deemed pper for preventg any such encroachmt, or the acquison of any such easemt. Not to stop up windows of demised premises, and not to permit new lights or encroachments in adjoining tenements.

XL. AND also will not (*g*) assn [transfer, underlet, or pt Not to assign or underlet without licence (*f*).

(*d*) As to the effect of this covenant, see *Harrison* v. *Good*, L. R. 11 Eq. 338; *Tod Heatly* v. *Benham*, 40 Ch. D. 80, *supra*, p. 320, note.

(*e*) In an underlease, say, "the lessor or the superior landlord."

(*f*) See 5 Dav. Prec., Pt. I., p. 193; Elph. Introd. Conv. 240; *West* v. *Dobb*, L. R. 4 Q. B. 634, 5 Q. B. 460; *Varley* v. *Coppard*, L. R. 7 C. P. 505; *Corporation of Bristol* v. *Westcott*, 12 Ch. D. 461. If the lessor is not to withhold his consent to an assignment, &c., to a responsible person, his consent is not necessary to render such an assignment valid, *Hyde* v. *Warden*, 3 Ex. D. 72; as to withholding the consent "arbitrarily," see *Treloar* v. *Bigge*, L. R. 9 Ex. 151; *Sear* v. *House Property, &c., Society*, 16 Ch. D. 387; *Barrow* v. *Isaacs*, [1891] 1 Q. B. 417, per Esher, M.R., p. 419. This covenant is excepted out of s. 14 of the Conv. Act, 1881, see sub-s. 6 (i): as to a right of re-entry on a breach of it, see *Barrow* v. *Isaacs, ubi supra*. A covenant not to assign without licence, though commonly inserted in rack-rent leases, is not, technically, a "usual" covenant; *Re Lander*, [1892] 3 Ch. 41. In the absence of express provision in the lease to the contrary, every lease is to be deemed to be subject to a proviso against the payment of a fine in respect of the grant of a licence to assign; Conv. Act, 1892, 55 & 56 Vict. c. 13, s. 3; but this does not extend to an underletting. As to covenant against assignment, &c., without licence.

(*g*) In a building lease, insert here:—"at any time durg the last *seven* yrs of the sd term hby grted."

with the posson of] the sd premes or any pt thof (orwise than by will) [or by underlettg the same with or witht the furniture thrin for any term not exceedg *one* yr] witht the previous consent in writg of the lessor [but so that such consent shl not be withheld to an assnmt or underlettg of the sd premes to a respectable & responsible pson; *or*, "shl not be unreasbly, arbitrarily, or vexatiously withheld, & so that no fee or chge shl be required to be pd for the givg thof."] [PROVD THAT it shl be lful for the lessee to take a ptner or ptners in his sd business carried on in the sd demised premes, & also to remove or dispose of any of the engines, machy, bldgs, erons, & other things thron, for the ppose of replacg or renewg the same, & such act shl not be deemed to be a breach of the covt lastly hinbfe contd.]

Proviso in lease of business premises.

To give lessor notice of assignment of lease (*a*).

XLI. AND also that the lessee will, within three calr months next after any absolute transfer, assnmt or devolon of his intt under this psnt lease in the sd demised premes, or any pt thof, give notice in writg of such transfer, assnmt, or devolon, & of the name, quality, & place or places of abode of the transferee or transferees or assnee or assnees to the lessor or his solor, & produce to him the instrumt of such transfer, assnmt, or devolon, & pay to him a fee of £—— for the registron of such notice.

To give lessor right of pre-emption in case of assignment, &c.

XLII. AND also will not assn or underlet the sd premes, or any pt thof, for all or any pt of the sd term, witht first makg proffer for the sale or disposon of his este or intt thrin to the lessor, provd the lessor will give as great a price or conson as any other pson wd give for the same.

To permit lessor to lay down drains and gas and water pipes in connection with adjoining property.

XLIII. AND also that it shl be lawful for the lessor or any pson or psons by him authorised in that behalf, at any time to enter upon the sd demised premes for the ppose of constructg, laying down, alterg, repairg, cleansg, emptyg, or maintaing any sewers, watercourses, cesspools, gutters, drains, waterpipes, [electric wires], or gas-pipes, in connon with, or for the accommodon of, any adjoing ppty, doing as

(*a*) See the remarks as to this covenant in Hood & Challis, Conv. Acts, p. 51.

little damage as may be to the sd premes hby demised, & restorg the surface of the soil, & everything erected thron, witht any unreasble delay, but witht makg compenson for any temporary damage or inconvenience to the lessee, so as no such sewer, &c., shl pass under or through the sd messe hby demised.

To permit lessor to obstruct lights and easements (*b*).

XLIV. And that it shl be lful for the lessor at any time durg the sd term to erect, rebuild, or alter any bldgs or erections facing, adjoing or near to the sd demised premes for any ppose & in any mner he may think fit, notwg that the same may obstruct or interfere with any rt of light or air for the time being appertaing to or enjoyed with the sd demised premes or any pt thof or any bldg for the time being thron.

Disputes between lessee and other tenants of lessor to be referred to his surveyor.

XLV. And also that, in case at any time durg this demise any dispute shl arise betn the lessee & any other of the tenants of the lessor relatg to the premes to them resply demised, or the pty or other walls, lights, drains, watercourses, or other easemts, rts, or appurts whatsr relatg or belonging thto, or any repairs thto, or nuisce or annoyce arisg thfrom, then & in every such case such dispute (provd the other pty thto shl also have agrd or become bound so to refer the same) shl be refd to the determinon & award of the surveyor for the time being of the lessor, wch shl be final & bindg on the lessee.

General covenant by an underlessee to perform the covenants in the head lease (*c*).

XLVI. And also will at all times durg the sd term duly pform & observe all the covts, agrmts, & provons affectg the sd premes hby demised wch are contd in the superior lease of the sd premes dated, &c., & on the pt of the lessee thrunder to be pformed & observed, except the covts for paymt of rent, &c., *here specify any other exceptions*, & will

(*b*) This covenant is of course effectual according to its tenor, and excludes the application of *Mitchell* v. *Cantrill*, 37 Ch. D. 56, where words negativing the implication of a grant of lights were held not to preclude the lessee from acquiring them by prescription against the lessor. Covenant excluding right to lights.

(*c*) See *Penley* v. *Watts*, 7 M. & W. 601; *Hornby* v. *Cardwell*, 30 W. R. 263; 8 Q. B. D. 329; 26 Sol. J. 528, 544; *Pontifex* v. *Foord*, 12 Q. B. D. 152.

not at any time do, omit, or suffer anything whby such superior lease may be avoided or forfeited; And will at all times keep indemnified the lessor agst all actions, pcdgs, costs, damages, claims, demands, & liability, for, or in respt of, any breach wch may be committed durg the sd term of any of the sd covts, agrmts & provons, except as afsd.

LESSOR'S COVENANTS.

Commencement.

I. And the lessor doth hby [for himself, his hrs, exs, ads, & assns (*a*)], covt with the lessee [in mner follg: that is to say:]

The same.

II. And the lessors do hby [for themselves resply & their respive hrs, exs, ads, & assns (*a*)], covt, &c.

Several lessors.

To pay rates and taxes (*b*).

III. That the lessors will durg the sd term pay all existg & future rates, taxes, chges, & outgoings whatsr, whether parliamentary, parochial, or local, for the time being payable in respt of the sd demised premes, [except such & such pts of the sd rates, taxes, chges, & outgoings, as are hinbfe covted to be pd by the lessee.]

To repair outside of premises (*c*).

IV. And also will at all times durg the sd term keep the outer walls, roof, & outside of the sd messe & bldgs in pper & substantial repair.

To execute sanitary works.

V. And also will at any time durg the sd term, exte any works wch by any report made by the surveyor to the sanitary authority of the district shl be certified to be necy

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As to lessor's covenants binding assigns.

(*a*) As to the statutory provisions making the benefit and obligation of the covenants run with the land, see p. 734, note. The words in brackets binding the assigns of the lessor are of course inappropriate for a mere personal covenant, such as the covenant for quiet enjoyment; and having regard to the Conv. Act, 1881, s. 11, appear to be unnecessary even where the obligation of the covenant is intended to run with the land, except in the case mentioned in p. 735, note.

(*b*) See 5 Dav. Prec. part I., 22; Elph. Introd Conv. 231; and *ante*, p. 744, note.

Lessor's covenants to repair.

(*c*) The lessor is not liable under this covenant unless he has received notice of the want of repair; *Makin* v. *Watkinson*, L. R. 6 Ex. 25; *Manchester, &c., Co.* v. *Carr*, 5 C. P. 507.

in order to put the sd premes into good sanitary order & condon.

VI. AND ALSO will at all times durg the sd term, keep the main walls & timbers, roof, drains, & exterior of the sd bldg & premes, & the staircase, passages, water-closets, & lavatories, & such other internal pts thof as shl from time to time be used by the lessee, in common with the owners or occupiers of the other rooms or offices in the sd bldg, in good & substantial repair, & in clean & pper order & condon, & also will keep the flooring & timbers above the sd demised premes & all the upper pts of the sd bldg & all cisterns & water pipes thrin in such good & substantial order & condon as will prevent any injury to the sd demised premes or the furniture or contents thof from leakage by water or orwise & make good all damage thto caused by any such want of repair or leakage or by any negligce or act of any of the occupiers of the upper pts of the sd bldg (*d*). To repair in lease of part of a house to be used as offices.

VII. AND ALSO will at all times durg the sd term (unless such insce shl be vitiated by an act of the lessor) insure & keep insured the sd demised messe & premes agst loss or damage by fire in some insce office of repute in the sum of £—— at the least, & will, whenever required, produce to the lessee the policy or policies of such insce, & the rect for the last premium for the same: And further, that in case of destron of or damage to the sd premes, or any pt thof by fire, the lessor will with all convenient speed spend & lay out all moys reced in respt of such insce in rebldg or reinstatg in a good & substantial mner the premes so destroyed or damaged (*e*), & in case such moys shl be insufft for such ppose, will make good such deficiency out of his own moys. To insure.

VIII. AND ALSO will adequately insure the sd premes agst fire, & in case of destron or damage by fire, will rebuild or reinstate the same. The same. Short form.

(*d*) See *Anderson* v. *Oppenheimer*, 5 Q. B. D. 602.

(*e*) See p. 752, note (*c*).

Not to build so as to obstruct lights.

IX. AND ALSO that no bldg or eron shl at any time durg the sd term be erected or placed in the garden or rear of the house No. —— in —— Street, & abuttg on the east side of the sd premes hby demised, so as in any mner to obstruct or interfere with the access of light or air to any windows or openings now existing in the same premes.

For quiet enjoyment (*a*).

X. AND THAT the lessee payg the rent [sevl rents] hby reserved, & pformg & observg the sevl covts, condons, & agrmts hrin contd, & on his pt to be pformed & observed (*b*), shl & may peaceably & quietly hold & enjoy the sd premes hby demised durg the term hby grted witht any lful interron or disturbce from or by the lessor, his hrs or assns, or any pson or psons claimg under or in trust for him (*c*).

The same. Short form.

XI. THAT THE tenant, so long as he shl pay the rent hby reserved, & pform the covts on his pt hrin contd, may hold & quietly enjoy the sd premes durg the sd term witht interron by the landlord, or any pson claimg under or in trust for him.

Covenant by trustee against incumbrances (*d*).

XII. THAT THE lessor has not done or knowingly omitted or suffered or been pty or privy to anything whby he is prevented from demisg the premes or any pt thof in mner afsd.

As to covenant for quiet enjoyment.

(*a*) As to what amounts to a breach of this covenant, see *Sanderson* v. *Mayor, &c., of Berwick*, 13 Q. B. D. 547; *Jenkins* v. *Jackson*, 40 Ch. D. 71; *Robinson* v. *Kilvert*, 41 Ch. D. 88. As to who are "persons claiming under" the covenantor, see *David* v. *Sabin*, [1893] 1 Ch. 523; *Kelly* v. *Rogers*, [1892] 1 Q. B. 910.

(*b*) It seems that this does not make the payment of rent, &c., a condition precedent, *Edge* v. *Boileau*, 16 Q. B. D. 117; but see *Bastin* v. *Bidwell*, 18 Ch. D. 238, where the covenant was for renewal of the lease.

As to implying covenants for title.

(*c*) Covenants for title, &c., cannot be implied in a lease by making the lessor demise as "beneficial owner" or as "trustee," &c.; see the Conv. Act, 1881, s. 7 (5). As to the covenant implied by the word "demise," see Elph. Introd. Conv. 242. Sometimes the words "by way of assurce only & not of covt or warranty" are inserted before the word "demise," &c., to exclude any implied covenant; but the express covenant for quiet enjoyment would exclude any implied covenant. If several houses are demised by one lease at separate rents, say, "sevl yrly rents hby reserved," "sevl covts, &c., in respt of each of the sd messes & premes resply," "the sd sevl premes."

Covenant

(*d*) Compare forms IV. and V., pp. 446, 447. Where a trustee, executor

XIII. And also that the lessor will from time to time hrafter (but at the cost of the lessee) use his best endeavours to procure from the superior landlord of the sd premes hby demised [psuant to the covt in that behalf contd, or to be contd in the superior lease, or any renewal thof,] a new lease or leases of the sd premes, & that thrupon, & when & so often as the sd superior landlord shl grt & exte to the lessor such new lease or leases as afsd, the lessor will within —— days next after he shl obtain such new leases resply, at the reqt (*f*) & cost of the lessee, exte to him a new lease of the

Covenant in underlease for perpetul renewal on payment of a fine (*e*).

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or mortgagee grants a lease without the concurrence of any other person willing to covenant, he often gives the covenant for quiet enjoyment, as the liability under it is not very onerous; but it is conceived that in strictness a trustee, executor, or mortgagee cannot be compelled, even where the lease is granted pursuant to a contract entered into by the settlor, testator, or mortgagor (see the Conv. Act, 1881, s. 18, sub-s. 12), to enter into any covenant except that he has not encumbered. See *Worley* v. *Frampton*, 5 Hare, 560, and the cases there cited, and 1 Dart, V. & P. 623.

by trustees, &c.

Where an executor grants an underlease pursuant to his testator's contract, the covenant may be qualified by adding the words, "but not so as to incur any psonal liability except in respt of his own acts & defaults to an extent exceedg the assets of the sd testor wch may come to his hands," or "so as to bind the este of the sd testor but not so as to incur any further or other liability."

As to the case where the executor is the lessee taking the lease pursuant to the testator's covenant, see *Stephens* v. *Hotham*, 1 K. & J. 571.

(*e*) It seems that a covenant for renewal may be validly entered into under a power requiring the best rent to be reserved, provided the rent continues to be the best rent at the time of renewal (which if the lessee lays out money in building or improvements would not be likely); and although the power only authorises leases taking effect in possession within a limited time (*Gas Light, &c., Co.* v. *Towse*, 35 Ch. D. 519). This seems to apply not only to the ordinary express power, but to the leasing powers in the Settled Estates Act, 1877 (but see *Re Farnell*, 33 Ch. D. 599), and the Settled Land Act, 1882, ss. 6, 7; and as to a contract to grant a lease, see s. 31 (1), (iii.). The view taken in the former case was that although a lease *in futuro* is prohibited by the power, a contract to grant a lease *in futuro* is good provided the lease is in conformity with the power when the time for granting it arrives; but this is opposed to *Re Farnell*. The question was raised, but not decided, in *Re Lander*, [1892] 3 Ch. 41, whether there is any difference between a lease for a term with an option to renew for a further term, and a lease for the whole period, with an option to determine at the end of the first term.

As to covenants for renewal in leases under powers.

(*f*) It may be proper in some cases to specify what notice by the lessor

sd premes at & under the same rent, & containg the like covts, provons, condons, & agrmts as are in & by these psnts reserved & contd, by way of renewal for the further term of —— yrs to be computed from the end of the first —— yrs of the term hby grted, & so on from time to time for ever hrafter at the end of every —— yrs, the lessee payg for every such renewal at the time of the exon of the renewed lease unto the lessor, the sum of £——, being —— yrs' clear ground rent, by way of fine, togr with all arrears of rent, & executg a counterpt of every such renewed lease.

PROVISOES.

Power of re-entry (*a*).

1. PROVD ALWAYS & these psnts are upon this condon, that if the sd yrly rent hby reserved [sevl yrly rents hby

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of the intention to renew is to be given; see *Nicholson* v. *Smith*, 22 Ch. D. 640.

Relief against forfeiture.

(*a*) The power of the Court to relieve against forfeiture under a power of re-entry in a lease, which previously applied only to non-payment of rent (as to which see Elph., Introd. Conv. 213), and breach of covenant to insure (22 & 23 Vict. c. 35, s. 4), has been extended by the Conv. Act, 1881, s. 14 (which repeals the last-mentioned enactment), to all cases except (sub-s. 6) a covenant or condition against assigning or underletting, &c. (see *ante*, p. 757), or a condition for forfeiture on bankruptcy (see *Ex parte Gould*, 13 Q. B. D. 454), or taking the lessee's interest in execution (but as to bankruptcy or execution see now the Conv. Act, 1892, 55 & 56 Vict. c. 13, s. 2 (2)), or, in the case of a mining lease, a covenant or condition for allowing the lessor to inspect the books, weighing machines, &c., or the workings; the lessor being precluded (sub-s. 1) from enforcing the forfeiture unless the lessee fails, within a reasonable time after notice served on him by the lessor, to remedy the breach, if capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor, and (sub-s. 2) the Court can give relief on such terms as it thinks fit. This enactment did not apply to an agreement for a lease, unless possibly a right to specific performance could be shown, *Swain* v. *Ayres*, 21 Q. B. D. 289; *Strong* v. *Stringer*, 61 L. T. 470 (see Hood & Challis, pp. 49, *et seq.*); but see now the definition of "lease" and "underlease" in the Conv. Act, 1892, s. 5. An under-lessee of part of demised premises cannot obtain relief under s. 14 of the Conv. Act, 1881, against forfeiture for breach of a covenant contained in the head lease: *Burt* v. *Gray*, [1891] 2 Q. B. 98. But the Court may under the Conv. Act, 1892, s. 4, grant him relief in such a case by an order vesting in him the whole term of the head lease or any less term.

reserved or any of them], or any pt thof, shl at any time be in arrear or unpd for twenty-one days after the same shl have become due (whether any formal or legal demand thof shl have been made or not), or if the lessee shl at any time fail or neglect to pform or observe any of the covts, condons, or agrmts hrin contd & on his pt to be pformed & observed, [or if the lessee, while the sd demised premes or any pt thof shl remain vested in him, shl become subjt to the bkpt laws, or make any arrangemt or composon with his credors, or if the assns of the lessee being a coy shl enter into liquidon whether compulsory or voluntary (*b*),] then & in any such case it shl be lful for the lessor, or any pson or psons duly authorised by him in that behalf into or upon the sd hby demised premes, or any pt thof in the name of the whole, to re-enter (*c*), & the sd premes peaceably to

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As to equitable relief against forfeiture, see *Barrow* v. *Isaacs*, [1891] 1 Q. B. 417.

The power of re-entry for non-payment of rent is sometimes expressed to arise if the rent is in arrear, &c., "and no sufficient distress can be had or levied for the same," &c.; as to the wording in that case, see *Shepherd* v. *Berger*, [1891] 1 Q. B. 597.

As to the power of re-entry extending to the bankruptcy, &c., of the lessee, see *Hodgkinson* v. *Crowe*, 19 Eq. 591. It was stated in that case, on appeal, 10 Ch. 622, that under an agreement for a lease to contain the usual covenants, &c., a proviso for re-entry in the lease should extend only to non-payment of rent, and not to breach of any other covenants. This was followed in *Re Anderton*, 45 Ch. D. 476, where Chitty, J., held that s. 14 of the Conv. Act, 1881, had not altered the law on the subject, but suggested that a practice of extending the power to breach of any covenant might in process of time arise. The power, so extended, is inserted in probably 99 out of every 100 leases, whether for occupation or building, or otherwise; and any objection to its insertion is much lessened by the powers now possessed by the Court of relieving against forfeiture, see 37 Sol. J. 111, where the subject is discussed. As to the importance of extending the proviso to the breach of negative covenants, see *Hyde* v. *Warden*, 3 Ex. D. 72; *Evans* v. *Davis*, 10 Ch. D. 747; *West* v. *Dobb*, L. R. 5 Q. B. 460. A power of re-entry on the bankruptcy of the lessee, his executors, administrators, or assigns, does not apply where the lessee has assigned the lease before his bankruptcy, *Smith* v. *Gronow*, [1891] 2 Q. B. 394. Frame of power of re-entry.

The variations required for a lease to a company can readily be made from this form; see LEASES, MISCELLANEOUS.

(*b*) See *Wetley Brick and Pottery Co.*, 30 W. R. 445.

(*c*) The words often inserted authorising the lessor to effect a forcible As to

hold & enjoy thenceforth, as if these psnts had not been made, witht prejudice to any rt of action or remedy of the lessor, in respt of any antecedent breach of any of the covts by the lessee hinbfe contd.

The same.

Short form.

II. PROVD ALWAYS that if the rent hby reserved, or any pt thof, shl be in arrear for twenty-one days after the same shl become due (whether demanded or not), or in the event of any breach of any of the covts & agrmts on the pt of the tenant hrin contd, or of his becoming subjt to the bkcy laws, or makg any composon or arrangemt with his credors, the landlord may re-enter upon the sd demised premes (*a*).

Proviso to follow power of re-entry in lease of several houses at separate rents.

III. PROVD ALSO & it is hby agrd, that the non-paymt of the rent hby reserved, or the breach of any of the covts or condons hrin contd in respt of any one of the sd messes, shl not authorise the re-entry of the lessor into or upon the others of the sd messes, or any of them, but only into or upon the parlar messe in respt whof such breach shl have happened, it being the intention that each of the sd messes hby demised shl be held durg the sd term hby grted separately from & independently of the others thof, & shl not be affected by any non-paymt of rent or breach of any covt or condon in respt of any others or other of the sd messes.

Proviso excluding liability of lessee after

IV. PROVD ALWAYS & it is hby agrd that the lessee, his exs & ads, shl not be liable to the paymt of the rent hby reserved, or to the pformce of any of the covts or condons hinbfe contd any longer than he or they shl continue to

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authorising a forcible entry.

entry and eject the lessee are omitted, as such an authority cannot lawfully be given (*Edwick* v. *Hawkes*, 18 Ch. D. 199; and see *Beddall* v. *Maitland*, 17 Ch. D. 174); and it seems that the power would not be good even to the extent of authorising an unopposed entry by breaking open doors and windows.

Another form of power of re-entry.

(*a*) The form might as an alternative provide that in the events specified, "the landlord may determine the tenancy hby created by giving to the tenant seven days' notice in writg to that effect, & may after the expiron of such notice resume posson of the premes and remove thfrom all ppty belonging to the tenant and relet the same witht any process of law or further authority in that behalf."

hold this psnt lease, if he or they shl have assned the same to some responsible pson or psons or Co, & notice in writg of such assnmt shl have been given to the lessor, to whom an attested copy thof shl also, if required, be supplied at the cost of the lessee, his exs or ads. assignment (*b*).

v. PROVD THAT in case the sd messe, bldgs, & premes, or any pt thof, shl at any time be destroyed or so damaged by fire, explosion, or any other means as to be unfit for occupon or use, & shl not be rebuilt or reinstated by the lessor within three calr months after the occurrce of such fire, then & in such case (unless the insce of the premes shl have been forfeited by the act or default of the lessee) the rents hby reserved, or a fair & just proportion thof, accdg to the nature & extent of the damage sustained, shl from & after the expiron of such three months, & until the premes shl have been rebuilt or reinstated & made fit for occupon or use, be suspended & cease to be payable, & in case of dispute as to the proportion or period of such abatemt the same shl be refd to arbitron psuant to the provon in that behalf hinafter contd, such abatemt to be in full for all claim for damages by the lessee agst the lessor (*c*). That rent shall be suspended in case of fire in default of lessor rebuilding.

VI. PROVD ALWAYS & it is hby agrd that if any pt of the Power of distress(*d*).

(*b*) A clause of this kind is of course very exceptional.

(*c*) That in the absence of such a provision the tenant would be liable for the rent, see *Manchester, &c., Co.* v. *Carr*, 5 C. P. D. 507. Power is sometimes given to one or both parties to determine the lease in case of total destruction; the following may be added for this purpose, "Provd always that in case the sd messe, bldgs & premes shl be destroyed by fire or orwise as afsd so as to be wholly unfit for occupon or use, this psent lease may at the option of eir the lessor or lessee (such option to be decld in writg within —— days after such destron), be determined, the lessee in that event paying the rent hby reserved up to such determon." Power to determine lease in case of total destruction.

(*d*) This is probably not affected by the Bills of Sale Acts, 1878 and 1882. Sometimes the common law power of distress is extended by providing:—"that the power of the lessor to distrain upon the sd demised premes for rent in arrear shl extend to & Extension of power of distress.

sd [furniture] rent shl be in arrear for twenty-one days, whether legally demanded or not, it shl be lful for the lessor into & upon the sd —— & premes or any pt thof to enter & distrain, & the distress or distresses then & there found to dispose of in due course of law, & to apply the produce thof in or towards paymt of the sd yrly rent of £—— so in arrear, & all costs, chges, & expses occasd by the non-paymt thof.

Clause enabling under-lessee to pay rent to superior landlord (*a*).

VII. PROVD ALWAYS & it is hby agrd that it shl be lful for the lessee to pay the rent hby reserved to the superior landlord whose rects for such yrly rent when pduced & delivered up to the lessor shl be in full satisfon & dischge of so much of the rent hby reserved as in such rects shl be expd to be reced by the superior landlord.

Power to lessee to determine lease (*b*).

VIII. PROVD ALWAYS & it is hby agrd that if the lessee shl be desirous of determing this psnt lease at the expiron of the first —— or —— yrs of the term hby grted, & of such his desire shl give —— calr months' previous notice in writg to the lessor, or leave the same at or send the same by registered lre to his usual or last known place of abode in England (*c*), & shl pay all the rent, & pform & observe all the covts hinbfe reserved & contd, & on the pt of the lessee to be pd, pformed & observed up to such determinon, then & in such case, immedly after the expiron of the sd term of —— or —— yrs as the case may be, this psnt lease & everything hrin contd shl cease & be void [witht

include any tenant's fixtures or fittings not orwise by law distrainable wch may from time to time be thron." See Smith's L. C., p. 469, note. As to the statutory restrictions on the right of distress, see above, p. 748, note.

(*a*) See Tudor R. P. C., pp. 299, 300.

(*b*) This may be inserted under an ordinary leasing power; *Edwards* v. *Millbank*, 4 Dr. 606; and see *Re Lander*, [1892] 3 Ch. 41, *ante*, p. 763, note (*e*).

A power enabling the lessee's executors to determine the lease at the end of three months from his death is sometimes desirable.

(*c*) Provision as to the mode of serving notices whether on the lessor or lessee is desirable, see *Hogg* v. *Brooks*, 15 Q. B. D. 256. Sometimes a general clause for this purpose is inserted. See form *infra*, p. 771.

prejudice to any claim by the lessee agst the lessor in respt of any antecedent breach of any covt or condon hrin contd (*d*)].

IX. PROVD ALWAYS & it is hby agrd that if the lessor shl be desirous of determg this psnt lease at the expiron of the first —— or —— yrs of the term hby grted, & of such his desire shl give —— calr months' previous notice in writg to the lessee, or leave the same for him on any pt of the demised premes (*e*), then & in such case, immedly after the expiron of the sd term of —— or —— yrs as the case may be, this psnt lease & everything hrin contd shl cease & be void witht prejudice to any claim by eir pty agst the other in respt of any antecedent breach of any covt or condon hrin contd. Power to lessor to determine lease.

X. PROVD ALWAYS & it is hby agrd that, &c., *continue as in form* VIII. *down to* "determinon," or if the lessor, &c., *continue as in form* IX. *down to* "the demised premes," then & in eir of the sd cases immedly after the expiron of the sd term of —— yrs or —— yrs as the case may be, this psnt demise & everything hrin contd shl cease & be void, but witht prejudice, if these psnts shl be determined by notice on the pt of the lessee, to any claim by the lessee, &c., *as in form* VIII., & if these psnts shl be determined by notice on the pt of the lessor to any claim by eir pty, &c., *as in form* IX. Power to either lessor or lessee to determine lease.

XI. PROVD ALWAYS that the tenancy hby created shl be determinable at the end of the first —— or —— yrs [at any time] by eir pty on givg to the other pty —— calr months' previous notice in writg [expirg at any period of the yr]. The same. Short form.

XII. PROVD ALWAYS & it is hby agrd that the lessor shl be entled, on givg written notice of his intention in that behalf to the lessee at least one calr month bfe the determinon of this psnt demise, or within one week after the determinon Power to lessor to purchase machinery at end of lease (*f*).

(*d*) The words in this bracket will be inserted if there are any covenants by the lessor other than for quiet enjoyment.

(*e*) See above, p. 768, note (*c*).

(*f*) See also LEASES, MINING. As to the rights in respect of fixtures in

thof by re-entry, to pchase from the lessee any addl machy, or effects of the nature of the machy or effects desed in the schdle hto, wch may durg this demise be put up or erected in or upon the sd premes by the lessee, at a valuon, to be made by two psons, one to be appted by each pty or their umpire. And in case the lessor shl not so agree to pchase the same, it shl be lful for the lessee to remove the same at the expiron of this demise, or within a reasble time thrafter (*a*).

Power to lessee to purchase the free-hold (*b*).

XIII. PROVD ALWAYS & it is hby agrd that if the lessee shl bfe the —— day of —— give to the lessor, or leave at his last known place of abode in England six calr months' notice (*c*) of the desire of the lessee to pchase the fee simple of the premes hby demised, then the lessor shl, on the expiron of such notice, & upon paymt of the sum of £——, togr with intt thron at the rate of —— p.c. p.a. from the

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case of the tenant's bankruptcy, see *Ex p. Gould*, 13 Q. B. D. 454; *Re Moser, ib.*, 738.

(*a*) As to the right of a lessee to remove fixtures belonging to him after giving up possession, see Woodfall, L. & T. p. 678, *et seq.*

As to option of purchase.

(*b*) The benefit of the option of purchase if not exercised by the lessee in his lifetime goes with the lease to his personal representatives and not to his heir; *Re Adams*, 24 Ch. D. 199; 27 Ch. D. 394. On the other hand, the exercise of the option after the death of the lessor has been held as between his real and personal representatives to operate retrospectively, so that the purchase-money is part of his personal estate, *Lawes* v. *Bennett*, 1 Cox, 167; but the soundness of this seems very questionable, see the remarks on the case in *Edwards* v. *West*, 7 Ch. D. 858, where it was held that the option cannot be exercised by the lessee retrospectively after the occurrence of a fire so as to entitle him to the insurance money. An option of purchase in a lease (however unrestricted as to time), is apparently not open to objection on the score of perpetuity, see *London & S. W. Rail. Co.* v. *Gomm*, 20 Ch. D. 562, at p. 579. The option of purchase does not make the lease liable to any extra stamp duty, *Worthington* v. *Warrington*, 5 C. B. 635.

Power of limited owners to give.

Trustees in the absence of express power, and executors and administrators, cannot lease with an option of purchase, *Oceanic, &c., Co.* v. *Sutherberry*, 16 Ch. D. 236; and a tenant for life or other donee of an ordinary leasing power is under the same disability; but in the case of building leases or agreements therefor under the Settled Land Act, 1882, this is now authorised under certain restrictions by the Settled Land Act, 1889, 52 & 53 Vict. c. 36.

(*c*) As to the notice see *Riddell* v. *Durnford*, W. N. 1893, p. 30.

expiron of such notice till the complon of the pchase, & of all rent hby reserved up to such expiron, assure the sd premes unto the lessee for an este in fee simple in posson, free from incumbces, except, &c. Provd also that the title of the lessor to the premes havg been already investigated & approved of by the lessee shl be deemed to be accepted by him up to the date of these psnts.

Provision as to notices to lessee or lessor (*d*).

XIV. PROVD ALWAYS & it is hby agrd that any demand of paymt or notice requirg to be made upon or given to the lessee shl be well & sufftly made or given if sent by the lessor through the post by registered letter addressed to the lessee at the sd demised premes or left for him at the sd premes & that any notice requirg to be given to the lessor shl be well & sufftly given if sent by the lessee through the post by registered letter addressed to the lessor at his usual or last known place of abode or business or left for him at such place. And that any demand or notice sent by post in eir case shl be assumed to have been delivered in the usual course of post.

Arbitration clause (*e*).

XV. AND IT IS HBY DECLD that if at any time hrafter any dispute, doubt, or question shl arise betn the lessor & the lessee, touchg the constron, meang, or effect of these psnts, or any clause or thing hrin contd, or their respive rts or liabilities under these psnts or orwise in relon to the premes, [or in case any valuon shl require to be made under the provons hinbfe contd,] then every such dispute, doubt, or question, [estimate, or valuon,] shl be refd to the arbitron or decision of two indifferent psons, one to be appted by each pty, & these psnts shl be deemed to be a submission to arbitron within the Arbitron Act, 1889, or any statutory modifon or re-enactmt thof for the time being in force.

Costs of agreement, &c.

XVI. THE COSTS & expses of & incidental to the preparon

(*d*) See p. 768, note (*c*).

(*e*) See the Arbitration Act, 1889, 52 & 53 Vict. c. 49, and *supra*, ARBITRATION. As to the scope of an arbitration clause in a lease, see *Turnock* v. *Sartoris*, 43 Ch. D. 150.

& exon of this agrmt & of the [every] lease & counterpt to be exted psuant thto, shl be pd by the lessee [& lessor in eql proportions, *or*, " accdg to the scale chge."]

PRELIMINARY NOTE.

Leasing powers of limited owners.

Settled estates.

Settled Estates Act, 1877.

It may be convenient here to mention some powers of leasing possessed by limited owners. As regards settled estates, a tenant in tail can grant a lease of any nature by deed enrolled under the Fines and Recoveries Act, 3 & 4 Wm. IV. c. 74 (see s. 21), and can under s. 41 grant without enrolment a lease for not exceeding 21 years, where the rent is not less than five-sixths of the rack-rent; and a tenant for life or pur autre vie can, under the Settled Estates Act, 1877, 40 & 41 Vict. c. 18, ss. 46, 47, 48, 54 (but see s. 57, and as to copyholds, s. 56), grant leases, except of the principal mansion-house, &c., for any term not exceeding 21 years at rack rent, and subject to other ordinary restrictions. The powers given by the last-mentioned enactments can by s. 49 be exercised on behalf of an infant, lunatic, or bankrupt tenant for life, &c., by his guardian, committee, or trustee respectively; as to married women, see ss. 50—52. See also as to the exercise of leasing powers vested in lunatics, the Lunacy Act, 1890, 53 Vict. c. 5, ss. 120 (*h*), 122, 124; and as to fines, s. 123 (2); as to lunatics not so found, see s. 116 (2, 3). Other leases of settled estates can be granted with the sanction of the Court under the Settled Estates Act, 1877, and in the case of an infant tenant in tail under 11 Geo. IV. & 1 Wm. IV. c. 65, s. 17 (referred to below). Questions have arisen under the Settled Estates Act as to what is a sufficient title to the possession or receipt of the rents to bring a case within the Act; see *Taylor* v. *Taylor*, 20 Eq. 297; *In re Dendy*, 4 Ch. D. 879; *Vine* v. *Raleigh*, 24 Ch. D. 238; and as to the effect of the usual minority clause in the case of an infant, see 4 Dav. 414, note (but the effect of the minority clause in the Conv. Act, 1881, s. 42, might be different). But all the above-mentioned enactments relative to settled estates are practically, to a great extent (save as regards the unlimited power of a tenant in tail under s. 21 of the Fines and Recoveries Act), superseded by the Settled Land Act, 1882, 45 & 46 Vict. c. 38, which applies to all settlements and agreements for settlements by deed, will or otherwise, existing as well as future, of lands of any tenure (s. 2); as to settlements by way of trust for sale, see s. 63 as amended by the Act of 1884, 47 & 48 Vict. c. 18, s. 7, above, p. 512, note. By the Act of 1882, tenants for life as defined by s. 2 (5, 6, 7), and tenants in tail and other limited owners as defined by s. 58, are invested with very large powers of leasing, with or without fine (ss. 6—13, 16, 17, 20, 31), subject to the restriction as to the principal mansion-house and land usually held with it imposed by the Amendment Act of 1890, 53 & 54 Vict. c. 69, s. 10, substituted for s. 15 of the Act of 1882, above, p. 505; fines being payable to the trustees to be dealt with as capital (see s. 42,

Settled Land Acts.

and the Act of 1884, s. 4). See also the Amendment Act of 1889 (52 & 53 Vict. c. 36), enabling an option of purchase to be given to the lessee. As to leases for erection of artizans' dwellings, see S. L. Act, 1892, s. 18, and 53 & 54 Vict. c. 70, s. 74, repealing by s. 102, 48 & 49 Vict. c. 72, s. 11 (1). As to leases to a County Council, see 55 & 56 Vict. c. 31, ss. 12, 13. As to giving notice of the intended lease to the trustees, see the Act of 1882, s. 45, as amended by the Act of 1884, s. 5, and as to leases for twenty-one years or less by the S. L. Act, 1890, s. 7, above, p. 510. As to who are trustees of the settlement for the purposes of the S. L. Acts, see the Act of 1882, s. 2 (8), and the Act of 1890, s. 16, and the query, *supra*, p. 508, note, as to whether the latter clause applies to leases. See also the Act of 1882, ss. 50, 53, 54, and the saving clauses (ss. 56, 57), as to the powers contained in the settlement. The powers of the Act are exercisable in the case of an infant tenant for life, &c., by the trustees (s. 60); in the case of a lunatic by the committee under an order in lunacy (s. 62), see also the references above to the Lunacy Act, 1890; and in the case of a married woman by her alone if entitled for her separate use, otherwise by her and her husband together (s. 61). See further as to the provisions of the Act generally, above, pp. 501 to 512, note. As to the effect of the Act where there is an express leasing power, see *Re Duke of Newcastle*, 24 Ch. D. 129.

Infants.

As regards unsettled estates of an infant, a lease granted by the infant himself is voidable at his election on his coming of age. Leases of an infant's fee simple or leasehold lands may be granted with the sanction of the Court under 11 Geo. IV. & 1 Wm. IV. c. 65, s. 17 (as to which see *In re Clark*, 1 Ch. 292; *Re Letchford*, 2 Ch. D. 719; *Re Griffith*, 29 Ch. D. 248); or under the Settled Estates Act, 1877, as extended by the Conv. Act, 1881, s. 41 (which does not seem to apply to copyholds or to leaseholds free from rent), even though the infant be only contingently entitled; *Re Sparrow*, [1892] 1 Ch. 412. Leases of such estates may also be granted by the guardian under the Settled Estates Act, 1877, s. 46, as extended by the last-mentioned enactment (see Hood & Challis, 109, note); as to the case of the guardian being a lunatic, see the Lunacy Act, 1890, s. 128. These enactments as to infants may be superseded by the larger powers of the Settled Land Act, 1882, which is by s. 59 extended to unsettled land of any tenure vested in an infant; but if there are no trustees the powers of that section could not be exercised without going to the Court under s. 60. Even where an adequate leasing power exists without recourse to the Settled Land Act, 1882, it will often be better to grant the lease under the Act, having regard to s. 56, and in order to take advantage of its beneficial provisions (see especially s. 54).

Married women. Married Women's Property Act, 1882.

As regards the estates of married women which are not in settlement, by the Married Women's Property Act, 1882, 45 & 46 Vict. c. 75 (ss. 1 and 2), a woman married after the commencement of the Act is enabled to dispose of her property whensoever acquired, and to contract, so as to bind her separate estate, subject to any settlement or restraint on anticipation (s. 19); and a woman married before the Act has the same power as to property her title to which accrues after the Act (ss. 1, 5). In these cases, therefore, a married woman has the same power of granting leases as if she were unmarried; but women married before the

commencement of the Act remain under the old disability as to their then existing property: as to the power to grant leases in the case where the property is not given to the wife for her separate use, see s. 46 of the Settled Estates Act, 1877 (referred to above), enabling a husband to grant leases of his wife's lands. As to the powers of a married woman where the estate is in settlement, see above.

Lunatics. A lunatic's estate may be let from year to year at the discretion of the committee, who may also grant leases, but only under an order of the Judge in Lunacy, see Lunacy Act, 1890, 53 Vict. c. 5, ss. 120 and 122, and as to execution of a lease by the committee, s. 124, and *Lawrie* v. *Lees*, 7 App. Ca. 19; as to lunatics not so found, see s. 116 (2).

Rector or vicar. A rector or vicar may, with the consent of the patron and ordinary, Co. Lit. 44a, grant a lease for a term not exceeding twenty-one years, or three lives, reserving the accustomed rent or more, under 13 Eliz. c. 10, and may under certain restrictions, grant farming leases with the consent of the bishop and patron for fourteen years, and in some cases, for twenty years, under 5 & 6 Vict. c. 27, subject to the restrictions imposed by 24 & 25 Vict. c. 105, ss. 1 and 2, and 25 & 26 Vict. c. 52, s. 1.

Ecclesiastical corporations. Most ecclesiastical corporations, including rectors and vicars, may, under the Ecclesiastical Leasing Act, 1842, 5 & 6 Vict. c. 108, as extended by the Act of 1858, 21 & 22 Vict. c. 57, with the consents therein mentioned and the approval of the Ecclesiastical Commissioners, grant leases for any terms, and in any manner with or without a premium. See further as to leases by Ecclesiastical Corporations, Woodfall's Landlord and Tenant, Phillimore's Ecclesiastical Law, p. 1692.

Charitable corporations. An eleemosynary corporation can grant such leases as are allowed by 13 Eliz. c. 10, see *Magdalen Hospital* v. *Knotts*, 4 App. Ca. 324.

Universities, &c. As to leases by the Universities of Oxford, Cambridge, and Durham, and the Colleges in those Universities, and the Colleges of Winchester and Eton, see the Universities and College Estates Acts, 1858, 1860, 21 & 22 Vict. c. 44; 23 & 24 Vict. c. 59.

Municipal corporations. As to leases by Municipal Corporations, see Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 108; and as to leases for working men's dwellings, s. 111, and schedule VIII., forms N. & O.

As to leases by corporations generally for erection of artizans' dwellings, see Settled Land Act, 1890, s. 18, and 53 & 54 Vict. c. 70, s. 74 (2), which by s. 102 repeals 48 & 49 Vict. c. 72, s. 11 (2).

Trustees and executors. As to the general leasing powers of trustees, apart from powers given by the instrument or by statute, see Lewin on Trusts, p. 670; *Re Shaw's Trusts*, 12 Eq. 124; and as to the general powers of executors and administrators to grant underleases, see Williams on Executors, pp. 942, *et seq.*; *Oceanic Steam Navigation Co.* v. *Sutherberry*, 16 Ch. D. 236.

Trustees of charity. The trustees of a charity may (subject to the restrictions imposed by the Charitable Trusts Act, 1855, 18 & 19 Vict. c. 124, s. 29) grant any lease which they are expressly empowered to grant by the instrument creating the trust, or which is beneficial to the charity; as to the nature of the leases which they may grant in the absence of an express power,

see Lewin on Trusts, pp. 597—602. A lease granted by them without the sanction of the Charity Commissioners, for a term for which under s. 29 such sanction is necessary, is absolutely void; *Bishop of Bangor* v. *Parry*, [1891] 2 Q. B. 277. They may also, with the consent of the Charity Commissioners, grant building, improving, or mining leases, under the Charitable Trusts Act, 1853, 16 & 17 Vict. c. 137, s. 21; see also s. 26, and the Amendment Act, 1855, 18 & 19 Vict. c. 124, s. 38. Under the last-mentioned Act, s. 39, all leases granted by the trustees, pursuant to a scheme approved by the Board, are valid; see also s. 16, and the Amendment Act of 1869, 32 & 33 Vict. c. 110, s. 12, enabling a majority of the trustees to grant leases of lands vested in them, or the official trustee of charity lands.

Mortgagor and mortgagee.

Leases of land of any tenure which is in mortgage may by the Conv. Act, 1881, s. 18, be granted by the mortgagor or mortgagee when respectively in possession, unless the statutory power is excluded by the mortgage: the leases authorised being ordinary leases for twenty-one years, or building leases for ninety-nine years, at the best rent and subject to the ordinary restrictions. See *Municipal, &c., Society* v. *Smith*, 22 Q. B. D. 70.

Agricultural leases.

As to the power of limited owners to grant agricultural leases, see 14 & 15 Vict. c. 25, s. 1, and as to leases by limited owners to County Councils, the Small Holdings Act, 1892, 55 & 56 Vict. c. 31, ss. 12, 13, extending the provisions of the Settled Land Act, 1882.

Disclaimer of leases.

As to the disclaimer of leases in bankruptcy, see the Bankruptcy Act, 1883, s. 55, as amended by the Bankruptcy Act, 1890, s. 13; Yate Lee & Wace, pp. 455, *et seq.*

Stamp.

As to the stamp duty on leases & agreements for leases, see the Stamp Act, 1891, ss. 75-78; and schedule, LEASE.

PRECEDENTS.

I.

PREC. I.

AGREEMENT *for* TENANCY *of* HOUSE *in a town from* YEAR *to* YEAR. *Short form.* VARIATION *where the* TENANT *has the* OPTION *to take a repairing* LEASE.

Parties.

AGRMT made this —— day of ——, BETN A., of, &c., hinafter called the landlord, of the one pt, & B., of, &c., hinafter called the tenant, of the other pt, WHBY THE LANDLORD agrees to let (*a*), & the tenant agrees to take THE

Agreement to let.

(*a*) As to implying a covenant for quiet enjoyment in a tenancy from year to year, see *Schwartz* v. *Locket*, 38 W. R. 142.

PREC. I.

Parcels. Term. Rent.

HOUSE situate & being No. ——, in —— street, ——, in the cty of ——, with the appurts from the —— day of —— next, from yr to yr (*a*) AT THE yrly rent of £——, payable qtrly on the usual qtr days, *or*, "on the —— day of ——, &c.," eir pty to be at liberty to terminate the tenancy on givg three calr months' notice to quit, expirg on any of the sd qtrly days, the landlord to pay all landlord's rates & taxes, & the tenant to pay all tenant's rates & taxes, [*or*, the tenant to pay all rates & taxes except landlord's ppty tax].

Option to tenant to take lease (*b*).

[PROVD ALWAYS & it is hby agrd that if at any time durg the tenancy hby created the tenant shl be desirous of havg a lease of the premes for a term of 21 yrs determinable by him at the end of the first 7 or 14 yrs & shl give the landlord a notice in writg to that effect then & in such case provd the tenant shl have duly pformed & observed the agrmts on his pt hinbfe contd up to the date of such notice, the landlord will grt to the tenant a lease of the premes accdly for such term as afsd, the lease to be considered as commencg on, & the term to be computed from the commencemt of the sd 3 yrs tenancy, & to be at the same rent as is hinbfe reserved & accdg to the form of lease wch has been pduced to the tenant & signed by both the sd pties hto & wch is hrunto annexed, & from & after the date of the sd notice the agrmt hinbfe contd for a tenancy of the premes for the sd term of 3 yrs shl be superseded & the premes shl thenceforth until the grantg of the sd lease be considered as held in all respts upon the terms of such intd lease, but so that the covts of the sd lease shl not be deemed to have any retrospective operon in relon to the date of the sd notice.] As WITS, &c.

(*a*) The demise should not be "for one year and so on from year to year," as this would enure as a tenancy for two years at least; see *Doe* d. *Chadborn* v. *Greene*, 9 A. & E. 658.

As to leases *in futuro*.

(*b*) As the lease will run from the commencement of the three years tenancy it will not be *in futuro*, and the agreement may therefore undoubtedly be entered into by a tenant for life under the Settled Land Acts. As to contracts for granting leases *in futuro*, see *Gas Light, &c., Co.* v. *Towse*, 35 Ch. D. 519; *Re Lander*, [1892] 3 Ch. 41; above, p. 763, note.

II.

AGREEMENT *for tenancy of a* COTTAGE *in the Country from* YEAR *to* YEAR (*c*). PREC. II.

AGRMT made this —— day of —— BETN A., of, &c., hinafter called the landlord, of the one pt, & B., of, &c., hinafter called the tenant, of the other pt. Partics.

1. THE LANDLORD agrees to let, & the tenant agrees to take, from the —— day of —— from yr to yr, until the tenancy is determined as hinafter mentd, the cottage & garden ground situate in the parish of ——, in the coy of ——, in the occupon of ——, on the follg terms. Agreement to let.

2. THE RENT to be £—— p.a. payable qtrly on the usual qtr days in each yr, & the tenant to pay all rates & taxes, except tithe & land tax. Rent, &c.

3. THE TENANCY to be determined at any qtr day on eir pty giving a previous qtr's notice in writg to the other of his intention to do so. Determination of tenancy.

4. THE TENANT to whitewash the cottage inside & out when required. Tenant to whitewash.

5. THE TENANT not to take any lodgers or allow any married son or daur to reside with him in the sd cottage witht the written consent of the landlord. As WITS, &c. Not to take lodgers.

III.

AGREEMENT *for Tenancy from* YEAR *to* YEAR *of part of a House to be used as* OFFICES, *the* LESSORS *being a* COMPANY. PREC. III.

AGRMT made the —— day of ——, BETN the —— Co, Limd (hinafter called the landlords), of the one pt, & ——, of, &c. (hinafter called the tenant), of the other pt. Parties.

(*c*) As to compensation for crops, &c., of small holdings, see 50 & 51 Vict. c. 26.

PREC. III.

Agreement to let. Parcels. Term. Reservation of rent.

1. THE LANDLORDS hby agree to let & the tenant agrees to take ALL THOSE rooms or offices on the —— floor of the bldg situate & being, &c., & nod —— on the plan hto annexed, with the fixtures & fittings specified in the schdle hto, & the appurts, from the —— day of ——, from yr to yr until the tenancy is put an end to at the end of the first or any subseqt yr (*a*) by eir pty on giving to the other —— calr months' previous notice in writg, AT THE yrly rent of £——, & so in proportion for any fractional pt of a yr, to be pd by eql qtrly paymts on the —— day of ——, &c., *or*, "the four usual qtr days," the first qtrly paymt to be made on the —— day of ——, & the last to be made in advce one calr month bfe the expiron of the tenancy.

Tenant agrees.

AND THE TENANT hby agrees with the landlord as follows :—

To pay rent.

2. TO PAY the sd rent on the days & in mner afsd.

To keep in repair.

3. TO KEEP the sd demised premes, includg the fixtures & fittings thof, internally in good & tenantable repair & condon (reasble wear & tear & damage by fire or other accident only excepted), & in such repair & condon to deliver up the same, togr with all fixtures & fittings, at the expiron of the tenancy.

To permit landlords to enter and view, and to repair on notice.

4. TO PERMIT the agents of the landlords to enter at all reasble times for the ppose of viewing the condon of the sd premes, & at his, the tenant's expse, to make good all defects thrin within one calr month after notice thof shl have been given or left upon the sd premes.

Not to use as dwelling place.

5. NOT TO use the sd premes nor any pt thof or suffer the same to be used as a dwg or sleepg place or orwise than as offices, witht the consent in writg of the landlords, nor witht such consent to make any alteron whatsr thrin.

Not to cause annoyance.

6. NOT TO do or suffer to be done anything wch may be or grow to the injury or annoyce of the landlords or the other tenants or occupiers of the sd bldg, or wch may render the landlords liable to pay in respt of the sd bldg, or any

(*a*) See p. 776, note (*a*).

pt thof, more than the ordinary or psnt rate of premium for insurce agst fire, or wch may make void or voidable any policy for such insurce. PREC. III.

7. NOT TO assn or underlet the sd premes or any pt thof witht the consent in writg of the landlords. Not to assign or underlet without consent.

8. THE LANDLORDS to have a rt of re-entry on non-paymt of the rent for 21 days, or breach of any of the tenant's agrmts. Power of re-entry.

AND THE landlords hby agree with the tenant as follows :— Landlords agree for quiet enjoyment (*b*).

9. THAT HE, duly paying the rent & pforming the agrmts hinbfe contd, may peaceably hold the sd premes during the period afsd witht any disturbce by the landlords or any pson claimg under them.

10. TO PAY all rates, taxes & outgoings whatsr, whether psnt or future, in respt of the sd bldg & premes. To pay taxes.

11. TO MAINTAIN & keep the outside main walls & timbers of the sd bldg & the passages, stairs, & conveniences intd for the common use of the occupants in good repair & in a clean, pper & sanitary condon. To keep outside, &c., in repair.

12. TO PROVIDE at their own cost a sufft supply of water for the premes. AS WITS, &c. To provide water.

[*Schdle of fixtures & fittings belonging to the landlords.*]

IV.

AGREEMENT *for lease of* HOUSE *in* TOWN (*c*). PREC. IV.

AGRMT made this —— day of ——, BETN A., of, &c., hinafter called the landlord, wch expression shl include, &c., Parties.

(*b*) As to this covenant, see *ante*, p. 762, note (*a*), and cases there referred to.

(*c*) This precedent and the following one are inserted for use where the preparation of the lease itself must for any reason be deferred, but if the granting of the lease is not to be contingent on anything to be As to agreements for leases.

PREC. IV.

see p. 734, of the one pt, & B., of &c., hinafter called the tenant, wch expression shl include, &c., of the other pt.

Agreement to let. Parcels.

1. THE LANDLORD agrees to grt & the tenant agrees to take a lease of ALL THAT messe situate & being No. —— in —— street in the parish of ——, in the coy of ——, with the appurts thof, & the use of the fixtures now in [& intd to be fixed in] or about the sd messe & premes & parlarly

Term.

descd in the schdle hto, FOR THE term of —— yrs from the —— day of —— (*a*), [determinable at the option of the tenant at the expiron of the first —— or —— yrs of the sd term on givg six calr months previous notice in writg to

Reservation of rent.

the landlord,] AT THE yrly rent of £——, payable qtrly on the —— day of ——, &c., *or*, "the usual qtr days," in every yr during the sd term, witht any dedon except for [land tax &] landlord's ppty tax, the first paymt thof amtg to £—— to be made on the —— day of ——, the tenant to pay & dischge all rates, taxes, & assessmts, & outgoings whatsr, whether parliamentary, parochial, local, or orwise, wch are now or shl at any time during the sd term be payable by landlord or tenant in respt of the sd premes or any pt thof except [land tax &] landlord's ppty tax.

Lease to contain covenants.

2. THE LEASE to contain covts on the pt of the tenant

To pay rent, &c.

To pay the rent & all rates, taxes, assessmts, & outgoings except as afsd:

To paint.

To paint the external wood & iron work, & other pts previously painted with two coats of good oil

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previously done by the tenant (such as the erection of buildings), it is better to dispense with a preliminary agreement and grant the lease at once, there being no difference in the stamp, and a tenant under an agreement for a lease being now practically a tenant for the whole term as if the lease had been actually granted; see *Walsh* v. *Lonsdale*, 21 Ch. D. 9; and s. 14 of the Conv. Act, 1881, applies where the lessee has become entitled to have his lease granted (see Conv. Act, 1892, s. 13, settling the question raised in *Swain* v. *Ayres*, 21 Q. B. D. 289; and commented on by Cotton, L.J., in *Lowther* v. *Heaver*, 41 Ch. D. 248, at p. 261).

As to the effect of a collateral representation that adjoining houses are subject to restrictive covenants, see *Martin* v. *Spicer*, 34 Ch. D. 1, 14 App. Cas. 12.

(*a*) See *Marshall* v. *Berridge*, 19 Ch. D. 233.

colour, & clean & colour the external pts usually coloured once in every three yrs [at the same time as & to correspond with the adjoing houses], & to paint the inside with two coats of good oil colour once in every seventh yr: To keep the sd premes & the fixtures thrin during the term, & to yield the same up at the expiron thof in a perfect & tenantable state of repair: To permit the landlord to enter & inspect the state of repair & to repair on notice: NOT to assn or underlet the premes witht the consent in writg of the landlord [provd that such consent shl not be withheld to an assnmt or underlettg to a respectable & responsible pson]: NOT to make any alteron in the premes witht such consent as afsd: [NOT to use the same or any pt thof orwise than as a private dwg-house: NOT to exhibit any bill or placard on or about the premes intimatg or giving notice that any pt less than the whole of the sd premes is or will be to let: NOT to put up in or upon or affix to any pt of the premes any writg or notificon of any profession, trade, or business whatsr: NOT to allow any sale by auction upon the premes witht such consent as afsd: To insure in the sum of £—— at the least, *or*, "to the full value," *or*, "to three-fourths of the full value," in the —— office or some other responsible office in London or Westminster in the jt names of the landlord & tenant, & to produce the policy & rect for the last premium when required, & in the event of fire forthwith to lay out the amt reced from the insurce office in reinstatg the premes, & to make good any deficiency out of the tenant's own moys]: [AND all other reasble covts wch are commonly contd in the leases on the —— este (*b*), *or*, "to be determined in case of dispute by the landlord's solor"].

To keep in repair.

Permit landlord to enter and view.

Not to assign, &c. without consent.

Not to alter.

To use as private house only.

Not to let lodgings.

Not to use for trade or profession.

Not to hold sales by auction.

To insure.

Other usual covenants.

3. [*If the landlord insures, add in lieu of the above provon for insurce*, THE LANDLORD to insure the sd house & premes agst fire in a responsible office in London or Westminster

Landlord to insure.

(*b*) This is better than saying "usual" covenants. As to what are usual covenants, see 27 Sol. J. 129, 142, 159, 177; *Crosse* v. *Morgan*, 37 W. R. 543; *Re Lander*, [1892] 3 Ch. 41; *ante*, p. 757, note.

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[& the expse thof to be pd by the tenant to the landlord on demand] & in the event of fire the amt reced from the insurce office to be forthwith laid out in reinstatg the premes].

Power of re-entry (*a*).

4. THE LANDLORD to have a rt of re-entry on non-paymt of the rent, whether legally demanded or not, for twenty-one days after the same shl have become due, or on breach of any of the tenant's covts.

Lease to be executed on demand.

5. THE LANDLORD shl, whenever required, exte, & the tenant shl whenever required, accept & exte a counterpt of a lease of the premes upon the terms & condons afsd, such lease & counterpt to be prepared by the solor of the landlord at the expse (*b*) of the tenant [not exceedg £——, exclusive of stamp duty, *or*, "the scale chge"], & the landlord's title shl not be required to be shown (*c*).

Until execution covenants in lease to be binding.

6. UNTIL THE sd lease is exted the sd pties shl be bound by the covts hinbfe mentd & agrd to be contd in such lease as if the same were actually exted.

Power of distress (*d*).

7. THE LANDLORD shl also have a power of distress for

(*a*) See *ante*, p. 765, note; 779, note.

(*b*) See Elph. Introd. Conv. 211.

Title to be shown on contract to grant lease or underlease.

(*c*) By the V. & P. Act, 1874 (37 & 38 Vict. c. 78), s. 2, (1) (where it will be noted that the expression "contract for *sale*" is used in its largest sense so as to include a lease, as being a sale *pro tanto*) and the Conv. Act, 1881, s. 3 (1), under a contract to grant a lease or underlease for years the lessee is precluded from calling for the title to the freehold, but in the case of an underlease is not precluded from calling for the lessor's leasehold title; by the Conv. Act, 1881, s. 13, under a contract to grant a lease, where the lessor holds by underlease, so that the lease is a sub-sub-lease, the lessee is precluded from calling for the title to the head lease, but not from calling for the sub-lease (see *Gosling* v. *Woolf*, [1893] 1 Q. B. 39); the effect being that an intending underlessee may always, unless barred by the contract, call for the lease under which his lessor immediately holds.

An agreement for a lease of land with an easement is, as well as to the easement as the land, an agreement for a lease of land, and falls within s. 2 (1) of the V. & P. Act, 1874; *Jones* v. *Watts*, 43 Ch. D. 574.

By the Settled Land Act, 1882, s. 31, a contract for a lease under that Act is not to form part of the title to the lease when granted; and by the Conv. Act, 1882, s. 4, the same is enacted as to all leases under powers.

(*d*) As to this see *Anderson* v. *Midland Ry. Co.*, 30 L. J. Q. B. 94; 5 Dav. Pt. 1, 19.

recovery of the sd rent & any other moys payable under this agrmt in like mner as if such lease had been actually exted. In wits, &c. PREC. IV.

[*Schdle of fixtures.*]

V.

AGREEMENT *for* Underlease *of* House *in* Town, Variations *where other* Property *is comprised in the* Head Lease (*e*). PREC. V.

AGRMT made this —— day of ——, Betn A., of &c. (hinafter called the "landlord," wch expression shl include Parties.

(*e*) In framing underleases the express obligation must, of course, be imposed on the underlessee of observing such of the covenants of the head lease as must necessarily be observed by the tenant in possession to prevent a forfeiture, such as covenants relative to the mode of using the premises; and the covenants of the underlease should be so framed as to arm the lessor with the means of seeing that the covenants of the head lease, so far as they are to be imposed on the underlessee, are duly performed, and of enforcing such performance by action, with the right of re-entry in default. The proper and usual course is to repeat such of the superior covenants as are to be performed by the underlessee *verbatim*, or (to save expense where the superior lease is too lengthy) in substance, with the necessary modifications; thus, if the head lease contains a covenant by the lessee to repair on notice, the underlease should contain a covenant by the underlessee to repair on notice given either by the head lessor or sub-lessor, and the right of entry to view the condition of the premises and any other similar right should be reserved both to the head lessor and sub-lessor. And it is sometimes desirable to add a general covenant for the performance and observance by the underlessee of all the covenants of the head lease, so far as they relate to his premises, except the covenant for payment of rent, and any others intended to be excepted; and (in order that the loss of the head lease, and not merely the immediate damage arising from the breach of the particular covenant, may be the measure of damages in an action against the underlessee for causing the forfeiture of the head lease) an express covenant not to do anything whereby the head lease may be forfeited. This was the more important, as an underlessee of part of demised property could not obtain relief under s. 14 of the Conveyancing As to frame of under-leases.

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his exs, ads, & assns, when the context so admits), of the one pt, & B., of, &c. (hinafter called the "tenant," wch expression shl include his exs, ads, & assns, where, &c.), of the other pt.

Agreement to let.

1. THE LANDLORD agrees to grt & the tenant agrees to take (*a*) a lease of ALL THAT messe, &c., situate & being,

Parcels.

&c., in the parish of ——, in the coy of ——, with the appurts thof, wch are held [togr with other hds] by the landlord under a lease (hinafter called the head lease) dated, &c. [TOGR WITH the fixtures descd in the schdle hto, & all other, if any, fixtures now in or about the sd messe &

Term.

premes], FOR THE term of —— yrs from the —— day of ——, AT THE rent, &c., *see last precedent.*

Lease to contain covenants similar to those in head lease.

2. THE LEASE shl [be subjt to the reservons follg, namely: *here specify reservons in head lease*, & shl] contain covts by the tenant, &c., *here specify covts in the head lease with the varions indicated in the note* (*e*), *page* 783, *& any*

Act, 1881, against forfeiture for breach of a covenant contained in the head lease; *Burt* v. *Gray*, [1891] 2 Q. B. 98. But such relief can under the Conveyancing Act, 1892, s. 4 (and see s. 5) now be obtained, by means of an order vesting in the underlessee the whole term of the lease. On the other hand (unless the underlease is at a rack-rent), it is proper that the sub-lessor should covenant to pay the ground rent, and perform such others (if any) of the covenants of the head lease as are to be performed by him, and also to produce the head lease, and (if the latter comprises other property) to perform the covenants thereof, so far as they relate to such other property, see Elph. Introd. Conv., p. 248; *Haywood* v. *Silber*, 30 Ch. D. 404.

As to disclaimer in bankruptcy.

As to the position of a person holding an underlease or agreement for one in the event of the disclaimer of the head lease by the lessee's trustee in bankruptcy, see the Bankruptcy Act, 1883, s. 55, as amended by the Bankruptcy Act, 1890, s. 13; *Re Cock*, 20 Q. B. D. 343; *Re Finley*, 21 Q. B. D. 475; *Re Morgan*, 22 Q. B. D. 592; *Re Smith*, 25 Q. B. D. 536 (all cases of sub-lease by way of mortgage); Yate Lee & Wace, p. 457.

As to the effect of a breach by the under-lessee of restrictive covenants in the head lease, see *Hall* v. *Ewin*, 37 Ch. D. 74.

Licence of landlord.

(*a*) If the licence of the superior landlord to the underlease has to be obtained, add here:—"subjt to the licence of the superior landlord being obtained at the cost of the tenant, & provd the same can be obtained witht paymt of any fine or conson."

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further covts required [*or*, shl contain covts by the tenants similar to those contd in the head lease [so far as the same are applicable to the premes] with the varions rendered necy by the diffce in the circes, & so that the landlord or the superior landlord, as the case may require, shl be named as the pson to give any notice or consent thrin mentd (*b*), & with the exception of the covt for paymt of rent, &c., *here specify any covts wch are inappropriate,* AND SHL also contain covts by the tenant, *here specify any covts not contd in the head lease,*] [& a genl covt to pform & observe & to indemnify the landlord agst the covts of the head lease [so far as the same are applicable to the premes] other than the covt for paymt of rent [& the other covts hinbfe excepted, & not to do, omit, or suffer anything whby the head lease may be forfeited, & also a covt to allow the landlord to enter on the premes & to pform thron any covts wch may be necy to prevent a forfeiture of the head lease].

Power of re-entry.

3. THE LANDLORD to have a rt of re-entry on non-paymt of the rent for 21 days after the same shl have become due, whether legally demanded or not, or for the breach of any of the tenant's covts.

Landlord's covenants.

4. THE LANDLORD to enter into the usual qualified covt for quiet enjoymt [& to covt for paymt of the ground rent & to pform the covts of the head lease wch are hinbfe excepted, & all the covts of the head lease with respt to the ppty thrin comprd & not hby agrd to be demised, & for prodon of the head lease].

5. THE LANDLORD when required shl exte, &c., *continue as in last Precedent, Nos. 5, 6, & 7.* AS WITS, &c.

[*Schdle of fixtures.*]

(*b*) See *Williamson* v. *Williamson*, 17 Eq. 549, 9 Ch. 729; *Haywood* v. *Silber*, 30 Ch. D. 404, which show the desirability of specifying the particular covenants to be included or excluded.

VI.

PREC. VI.

AGREEMENT *for Letting a* FURNISHED HOUSE (*a*).

Parties. AGRMT made the —— day of ——, BETN A., of &c. (hinafter called the landlord), of the one pt, & B., of, &c. (hinafter called the tenant), of the other pt.

Agreement to let. Parcels. 1. THE LANDLORD agrees to let, & the tenant agrees to take THE DWG-HOUSE & premes, situate & being No. ——, in —— street, in the parish of ——, & coy of ——, furnished as stated in the inventory contd in the schdle hto,

Term. Reservation of rent. FOR A term of —— [calr months] commencg on the —— day of —— & ending on the —— day of ——, AT THE [monthly] rent of £—— on posson being taken, £—— on the —— day of ——, &c.

Tenant agrees—

THE TENANT AGREES;

To pay rent. 2. To PAY the sd rent to the landlord in mner afsd.

To replace breakages, &c. 3. To REPLACE & make good all breakages, deficiencies, & damage to the furniture, fixtures, fittings, & effects in the sd dwg-house & premes, wch may happen during the period

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As to severance of rent. (*a*) It might be better to reserve a separate rent for the furniture, lest by the death of the lessor, or by a mortgagee of the house entering into possession, *Salmon* v. *Mathews*, 8 M. & W. 827, the right to the house and furniture should become severed, as the apportionment of the rent in that case might be difficult. The same remark applies in the case of a lease of freeholds and leaseholds together. Where in a formal lease a separate rent is reserved in respect of the furniture, a power of distress should be inserted, see p. 767; and 5 Dav. Prec. pp. 31 and 114, notes; Elph. Introd. Conv. 228.

As to implied warranty. As to implied warranty on such a letting that the house is fit for habitation (*e.g.*, free from vermin, properly drained, &c.), see *Smith* v. *Marrable*, 11 M. & W. 5; *Wilson* v. *Finch-Hatton*, 2 Exch. D. 336; 28 Sol. J. 529; and that there is no implied warranty in an ordinary lease of a house or buildings that the premises are fit for the purpose for which they are to be used, see *Manchester, &c., Co.* v. *Carr*, 5 C. P. D. 507; *Murray* v. *Mace*, 8 Ir. Rep. C. L. 396; or that they are reasonably fit for habitation or occupation, see *Hart* v. *Windsor*, 12 M. & W. 68; except in the case of artizans' dwellings; see 53 & 54 Vict. c. 70, s. 75 (repealing but re-enacting 48 & 49 Vict. c. 72, s. 12); *Walker* v. *Hobbs*, 23 Q. B. D. 458.

of his tenancy (except reasble use & wear & damage by accidental fire).

To deliver up in same condition.

4. At the expiron of the sd tenancy, to deliver up to the landlord posson of the premes with the whole of the sd furniture & effects accdg to the sd inventory, & in the same rooms in wch the same now are, in as sound, perfect & clean a condon as at the commencemt of the sd tenancy (except as afsd).

To pay for washing.

[5. To pay for the washing of such articles as may require washing.]

To give notice of infectious diseases.

[6. In the event of any infectious disease mentd in the 6th section of the Infectious Disease Notificon Act, 1889, happeng in the sd house during the sd tenancy to give written notice thof, & any other informon wch may be required relative thto, to the landlord or his agent, bfe or immedly upon the expiron of the tenancy, & to pay to the landlord the sum of £—— for the expses of disinfectg the premes, & replacg any articles & things the destron of wch may be rendered necy by such illness, & in case of default in giving such notice as afsd, to pay to the landlord in addon the sum of £—— as liquidated damages (*b*)].

Not to assign, &c.

7. Not to assn, underlet, or pt with his intt under this agrmt witht the written consent of the landlord.

Landlord to pay superior rent, &c.

8. The landlord agrees to pay the superior rent & all rates, taxes, insce, & other outgoings payable in respt of the premes during the sd tenancy, except the gas-rate, wch is to be pd by the tenant.

Power of re-entry (*c*).

9. In case of non-paymt of rent or breach of this agrmt by the tenant, the landlord shl be at liberty to re-enter & take posson of the premes, witht prejudice to his rt to recover all rent then in arrear & any damages for breach of this agrmt. As wits, &c.

[*Schdle of furniture.*]

(*b*) See p. 248, note; 53 & 54 Vict. c. 34, s. 7; and as to London, 54 & 55 Vict. c. 76, ss. 55, 65.

(*c*) See *ante*, p. 764, note.

VII.

PREC. VII. AGREEMENT *for Letting* FURNITURE, *&c., to Hire.*

Parties. AGRMT made the —— day of ——, BETN A., of, &c., of the one pt, & B., of, &c., of the other pt.

Agreement to let. 1. THE SD A. shl let to hire to the sd B., THE FURNITURE, fixtures, goods, & effects, set forth in the schdle or list hrunto annexed (wch are now in, upon, or about the house & premes known as, &c., in the occupon of the sd B., but are the ppty of the sd A.), AT THE rent of £—— per calr month, & so in proportion for any less period than a month, to be pd by the sd B. to the sd A., on the —— day of —— in every month, the first monthly paymt thof to be made on the —— day of —— next.

Reservation of rent.

Tenant to keep in repair. 2. THE SD B. hby agrees with the sd A., at all times durg the sd lettg to hire of the sd effects, to keep the same in a good & perfect state of repair & condon in every respt & insured agst fire to their full value in some respectable office, & whenever required to pduce the policy of such insce & the rect for the last premium to the sd A., & also to replace such of the sd effects as may be broken, destroyed, or damaged (by whatsr means), with other articles of eql value, & not to remove the sd effects or any pt thof from the sd house & premes, nor to underlet, lend, or pt with the posson of the same, eir directly or indirectly to any pson or psons whomsoever witht the previous written consent of the sd A.

Insure.

Replace broken furniture.

Not to remove or part with furniture, &c.

Power of re-entry without notice (*a*). 3. PROVD ALWAYS that the sd A. may at any time witht givg any previous notice to the sd B., put an end to the sd letting to hire, & may thrupon enter upon the premes or any pt thof, & remove & carry away the sd effects. As WITS, &c.

[*Schdle.*]

(*a*) The licence to enter is not assignable by the lessor; *Ex parte Rawlings*, 22 Q. B. D. 193.

VIII.

LEASE *of a* DWELLING-HOUSE *in a Town for* TWENTY-ONE YEARS, *with* ORDINARY COVENANTS. VARIATIONS *where the* HOUSE *is to be used as a* SHOP, *when it is situate in a* PRIVATE ROAD, *or in a* SQUARE, *where the* LEASE *is* DETERMINABLE *by* LESSOR *or* LESSEE *or* BOTH, *where the* LESSOR *is to* INSURE, *and where the* LESSOR *has other* PROPERTY ADJOINING (*b*). PREC. VIII.

THIS INDRE, made the —— day of ——, BETN A., of, &c., hinafter called the lessor, wch expression shl include, &c., *see* p. 734, of the one pt, & B., of, &c., hinafter called the lessee, wch expression shl include, &c., of the other pt, WITNETH that in conson of the rent [s] & covts hinafter reserved & contd & on the pt of the lessee to be pd, pformed, & observed, the lessor doth hby demise unto the lessee ALL (*c*) THAT messe or tenemt situate & known as No. —— in —— Road [Street *or* Square] in the parish of ——, in the coy [city] of —— (*d*), TO HOLD the same UNTO the lessee from the —— day of —— for the term of twenty-one yrs [determinable as hinafter mentd], *Reservn of rent*, p. 740, [*if lessor insures at expse of lessee add insce rent*, p. 743] *if so agrd, penal rents*, p. 743: AND THE lessee doth hby for himself, his hrs, exs, ads, & assns, covt with the

Parties. Witnesseth. Demise. Parcels. Habendum. Lessee's covenants.

(*b*) For variations for leases granted under powers and for several lessors and lessees, and other special cases, see "LEASES MISCELLANEOUS."

(*c*) For other forms of parcels, see p. 416, form III., and p. 736. For addition where use of public garden is included, see p. 737.

(*d*) If the house is situate in a private road, add here, "togr with, &c.," *rt of way*, p. 737, *form* VII. Where adjoining property belongs to the vendor, insert here, *reservn of rt of drainage*, p. 739, *& if pper, reservn of genl rts & rt to rebuild or repair adjacent bldgs*, p. 740.

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lessor (*a*) in mner follg, that is to say, *to pay rent*, p. 744; *& rates & taxes*, p. 744; *to paint outside*, p. 745; *& inside*, p. 745; *to keep in repair*, p. 746 (*b*); *to deliver up at end of tenancy in good repair*, p. 749; *to permit lessor to enter & view, & to repair on notice*, p. 749; [*power to lessor to repair on default of lessee*, p. 750] (*c*), [*to insure & rebuild in case of fire*, p. 751 (*d*)] *not to make alterons in premes*, p. 754 (*e*); *not to create nuisces*, p. 757 [*not to assn* [*or underlet*] *witht license*, p. 757, *or, to give notice of assnmts*, p. 758]; *Proviso for re-entry*, p. 764 [*Proviso for cesser of rent on destron by fire*,

(*a*) The covenants may be somewhat shortened by numbering them and proceeding from here as follows, the consequential alterations being made throughout: "that the lessee will at all times during the sd term, *or*, 'tenancy,' duly observe & pform all the covts & provons follg (that is to say), 1. will pay, &c."

(*b*) If the landlord is to do the outside painting and repairs, omit the covenant by the lessee to paint outside; and at the end of the covenant to keep in repair, the words, "except such repairs as are hby agrd to be exted by the lessor," and insert among the lessor's covenants the covenant *to paint outside*, p. 745, *& to repair outside*, p. 760.

(*c*) Where the property is situate in a private road or square, add here, *covt to pay proportion of expse of maintaing roads, sewers, &c.*, p. 747, *or square*, p. 748, *mutatis mutandis*. Where adjoining property belongs to the lessor, insert, if required, *power to lessor to enter to repair adjoing premes*, p. 750.

(*d*) If the lessor is to insure, this covenant will be omitted, and if so agreed substitute the covenants, *to repay the lessor the sums pd for insce*, p. 751, and *not to do anything to increase rate of insce*, p. 753. If the house is to be used as a shop, add, if so agreed, the provisions *for insce of the windows agst accident*, p. 751, note (*g*).

(*e*) If adjoining property belongs to the lessor, insert here if required, *covt to use as private dwg-house only*, p. 756, *not to do any act to the damage or annoyce of the lessor or his tenants*, p. 757, *to permit lessor to lay down gas & water-pipes, &c., in connon with adjoing ppty*, p. 758. If the house is to be used as a shop, instead of the covenant to use as a private house, insert if required *covt not to carry on offensive trades*, p. 756.

p. 767]: AND THE lessor doth hby [for himself, his hrs, exs, ads, & assns, *see* p. 760, *note*] covt with the lessee [*to insure & rebuild in case of fire*, p. 761]; *for quiet enjoymt*, p. 762 [*Power to lessor or lessee or both to determine lease at end of first seven or fourteen yrs*, pp. 768, 769]. IN WITS, &c. PREC. VIII. Lessor's covenants.

IX.

LEASE *of a* NEWLY ERECTED HOUSE *for* NINETY-NINE YEARS *to a* BUILDER'S NOMINEE (*f*). VARIATIONS *where the house is* UNFINISHED (*g*). PREC. IX.

THIS INDRE, made the —— day of —— BETN A., of, &c., hinafter called the lessor, wch expression shl include, &c., *see* p. 734, of the first pt, B., of, &c., *builder*, of the second pt, & C., of, &c., hinafter called the lessee, wch expression shl include, &c., of the third pt, WITNETH that in conson of the expse incurred [and to be incurred] by the sd B. in erectg the messe hby demised, & of the sum of £—— now pd to the sd B. by the lessee (the rect, &c.), & of the rents & covts on the pt of the lessee, & condons hinafter reserved & contd, the lessor, by the diron of the sd B., doth hby demise unto the lessee ALL THAT pce of land situate on the south side of a new road or street intd to be called —— Street (*h*), & ALL (*i*) THAT messe or dwg- Parties. Witnesseth. Demise.

(*f*) As to building leases under the Settled Land Acts, see p. 802, note.

(*g*) For the variations where the house is situate in a private road or square, and where it may be used as a shop, and where the vendor has other adjoining property, see the last Precedent; and for the variations for a lease granted under a power and for several lessors and lessees and other special cases, see "LEASES MISCELLANEOUS."

(*h*) In the case of proposed new roads, care should be taken to define what rights of way are intended to be granted, see *Espley* v. *Wilkes*, L. R. 7 Ex. 298.

(*i*) See p. 789, note (*c*).

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Parcels.

Habendum.

Lessee's covenants.

house & out-bldgs erected or now in course of eron on the sd pce of land, & called or intd to be called No. ——, —— Street, *reference to plan*, p. 736, *form* II., TO HOLD the same UNTO the lessee from the —— day of —— [now last past] for the term of ninety-nine yrs, *reservon of rent of a peppercorn during first —— yrs & aftwds of £——*, p. 742, *form* IV. [*insurce rent*, p. 743] [*if so agrd, penal rents*, p. 743]: AND THE lessee doth hby for himself, &c., covt with the lessor in mner follg, that is to say, *to pay rent*, p. 744, *& rates & taxes affectg premes*, "or any erons thron or addons thto," p. 744; [*if house, &c., is not complete, to finish it*, p. 753, *mutatis mutandis*] (*a*), *to contribute to expse of roads, sewers, &c.*, p. 747; *to paint outside & inside* "the sd premes & all addons thto," pp. 745, 746, *& to repair*, p. 746; *to deliver up at end of tenancy in good repair*, p. 749; *to permit lessor to enter & view, & repair on notice*, p. 749; *power to lessor to take inventories of fixtures during last seven years*, p. 750; *not to alter premes*, p. 754, *to use as private house*, p. 756, *or, not to carry on offensive trades*, p. 756; *not to create nuisces*, p. 756; *to insure & rebuild in case of fire*, p. 751; [*to give notice of assnmts of lease*, p. 758; *not to assn or underlet during the last 7 yrs witht licence*, p. 757]; *power of re-entry*, p. 764: AND THE lessor doth hby (*b*) covt with the lessee, *for quiet enjoymt*, p. 762. IN WITS, &c.

(*a*) As to the necessity, where the lease is granted under a power, that the lessee should covenant to erect or complete the building, see *Hallett* to *Martin*, 24 Ch. D. 624; *Re Chawner*, [1892] 2 Ch. 192; *Corbett* v. *Jonas*, [1892] 3 Ch. 137. If in that case the lease is not granted until the buildings have been erected, it should, having regard to those cases, be expressed to be granted "in psuance of an agreemt in this behalf dated, &c."; this makes the agreement part of the title to the lease, which in a lease by an absolute owner would not be the case.

(*b*) See p. 760, note.

X.

UNDERLEASE *of a* HOUSE *in* TOWN. VARIATIONS *where* OTHER PROPERTY *is comprised in the head* LEASE (*c*). PREC. X.

THIS INDRE, made, &c., BETN A., of, &c. (hinafter called the lessor, wch expression shl include, &c., *see* p. 734, of the one pt & B., of, &c. (hinafter called the lessee), wch expression shl include, &c., of the other pt, WITNETH that in conson of the rent hinafter reserved & the covts hinafter contd, the lessor doth demise unto the lessee, ALL THAT messe or tenmt, &c., wch are held [togr with other hds] by the lessor under a lease dated, &c. [subjt to the reservons contd in the sd superior lease of the rt, &c. *state reservons, if any, in superior lease:* AND EXCEPT & reservg unto the lessor, &c., *addonal reservons, if any, to sub-lessor*]. *Habendum*, p. 740; *Reservon of rent*, p. 740: AND THE LESSEE doth hby for himself, &c., covt with the lessor *to pay rent*, p. 744: AND ALSO, &c., *here insert covts similar to those in the head lease, or such of them as are to be pformed by the lessee, substituty throughout the sub-lessor for the ground*

Parties. Witnesseth. Demise. Parcels. Lessee's covenants.

(*c*) See note, p. 783. If the licence of the superior landlord is required to the underlease, and he is made a party for the purpose the head lease should be shortly recited, setting forth the covenant against assignment and under-letting, with the addition of the following recital: "AND WHAS the sd X., *superior landlord*, has agrd to concur in these psnts for the ppose of giving his consent to the underlease hby grted in mner hinafter expd," and the demise will be expressed to be "with the consent (hby testified) of the sd X.," and a proviso should be added, "that the licence hinbfe given by the sd X. to this psnt demise shl not be deemed to authorise any further assnmt or underlettg." See LICENCES. If a separate licence is given, which is much more usual and convenient, it need not be referred to in the underlease. Licence of superior landlord.

As to the effect of the disclaimer of the head lease in bankruptcy, see references, above, p. 784.

PREC. X.

landlord, & the sub-lessee for the origl lessee, except that in the covt to permit lessor to enter & view & to repair on notice, the power to enter & view will be reserved to, and the notice to repair will be given by "the lessor, or the superior landlord, & their respive agents," *add the other covts, if any, to be entered into by the lessee,* [*& a genl covt to pform covts in head lease, other than for paymt of rent & any other excepted covts*, &c., p. 759. AND ALSO will allow the lessor to enter on the sd demised premes & to pform thron any of the covts & agrmts on the pt of the sd *origl lessee*, contd in the superior lease of the sd premes, wch may be necy to prevent a forfeiture of the sd superior lease]: *Provo for re-entry*, p. 764: AND THE lessor doth hby for himself, &c. (*a*) covt with the lessee *for quiet enjoymt*, p. 762: [AND ALSO will during the sd term pay the rent reserved by the sd indre of lease of the —— day of —— on the first day on wch the same shl be payable: AND WILL pform & observe the covts on the pt of the sd, *origl lessee*, contd in the superior lease to, *here specify any covts in the head lease wch are to be pformed by lessor in respt of the demised premes, & if the head lease comprises other ppty, add*, "AND WILL (*b*) pform & observe all the covts, agrmts, & provons on the pt of the origl lessee contd in the superior lease of the sd premes, so far as the same affect the premes comprd thrin & not hby demised." *Statutory acknowcmt & undertaky by A. as to prodon of superior lease*, p. 459]. IN WITS, &c.

Lessor's covenants.

To pay superior rent.

Perform covenants in head lease.

(*a*) See p. 734, note.

(*b*) In lieu of this covenant the following words may be added at the end of the covenant for quiet enjoyment, "or occasd by any default or neglect by the lessor or any other pson in the pformce or observce of the covts, &c." as in the text.

XI.

UNDERLEASE (*c*) *of Business* OFFICES *to two Persons as* CO-PARTNERS. PREC. XI.

THIS INDRE made, &c., BETN A., of, &c. (hinafter called the lessor, wch expression shl include, &c., *see* p. 734), of the one pt, & B., of, &c., & C., of, &c., tradg in co-ptnp under the style of Messrs. B. & Co. (hinafter called the lessees, wch expression shl include, &c.,) of the other pt: WITNETH that in conson of the rent & covts by the lessees & condons hinafter reserved & contd, the lessor doth demise & lease unto the lessees, ALL THOSE four rooms, offices or appartmts, situate & being on the —— floor at No. —— in —— Street, in the coy of ——, & now & for some time past in the tenure or occupon of the lessees, TOGR WITH free ingress & egress for the lessees, to & from the sd demised premes along & through the common staircases & passages of the sd bldg, at all times during the term hby grted betn the hours of —— in the morng & —— in the night on every day in the yr (Sundays, Good Friday, & Christmas Day, & all other genl holidays & days appted for public thanksgivg or prayer excepted): AND the use, in common with the other psons entled thto, of the water-closets, lavatories, & convenices on the —— floor of the sd premes: TO HOLD the same UNTO the lessees, as jt tenants as pt of their co-ptnp este (*d*), from the —— day of —— for the term of —— yrs. *Reservn of rent payable half-yrly*, p. 740: AND THE LESSEES do hby for themselves, & their respive hrs, exs, ads, & assns jtly & sevlly, covt with the lessor, that they, the lessees, will, &c., *for paymt of rent*, p. 744; *to paint, &c., the inside of premes, substituty in this clause & subsequently, for* "lessee," "lessees,"

Parties.

Witnesseth.

Demise.

Parcels.

Right of way.

Use of conveniences.

Habendum.

Lessees' covenants.

(*c*) See p. 783, note, and p. 777, Prec. III.
(*d*) See p. 438, note.

PREC. XI.

p. 745 ; *to keep the inside of premes in repair*, p. 746 ; *to deliver up in good repair at end of tenancy with fixtures*, p. 749 ; *to permit lessor to enter & view, & to repair on notice*, p. 749 ; *not to make any alteron in premes*, p. 754 ; *to use as offices only*, p. 756 : AND ALSO will not allow clerks or servants to use water-closets, lavatories, or convenices, appropriated to the use of ppals : *Not to assn or underlet witht licence*, p. 757 ; *provo for re-entry*, p. 764. AND THE LESSOR doth hby for himself, &c., covt with the lessees, *to pay rates & taxes*, p. 760 ; *to keep in repair, &c.*, p. 761, *form* VI., *or* p. 779, *form* XI. ; *to insure & rebuild in case of fire*, p. 761 ; *for quiet enjoymt*, p. 762 (*a*). IN WITS, &c.

Not to allow clerks to use conveniences.

Lessor's covenants.

XII.

PREC. XII.

AGREEMENT *for a* BUILDING LEASE. *The existing* BUILDINGS *to be pulled down and others erected* (*b*).

Parties.

AGRMT made, &c., BETN A., of, &c., *lessor*, hinafter called the lessor, wch expression shl include the pson or psons for the time being entled to rece the rent payable hrunder where the context so admits (*c*), of the one pt, & B., *lessee*, hinafter called the tenant, wch expression shl include his exs, ads, & assns, where, &c., of the other pt.

Agreement to let.

1. IN CONSON of the rent & agrmts on the pt of the tenant hinafter reserved & contd, the lessor hby agrees to grt to the tenant, or his nominee or nominees, at the time & in the mner & subjt as hinafter mentd, a lease of ALL THAT pce of ground on wch a messe & bldgs are now erected,

Parcels.

(*a*) See p. 779, note.

As to building leases under Settled Land Acts.

(*b*) See agreement for building a house, *ante*, p. 1, and the forms at p. 314, *et seq*. As to building leases under the Settled Land Acts, see the Act of 1882, s. 6 (i.), s. 7, and s. 8 (as to which see *infra*, p. 802, note) ; and as to giving a right of pre-emption, see the Act of 1889.

(*c*) As to this form, see p. 735, note.

situate, &c., & with the admeasuremts & abuttals delineated in the plan, &c., TOGR with the messe & bldgs to be erected thron as hinafter provd, & the appurts thof FOR THE term of —— yrs, to be computed from the —— day of ——, AT THE yrly rent for the first yr of such term of £——, & for every subseqt yr of £——, payable [quarterly] witht dedon, except for ppty-tax, & to be in other respts accdg to the form of lease contd in the schdle hto (*d*). PREC. XII. Term. Rent.

2. THE TENANT shl at his own cost with all reasble speed, pull down & remove the messe, bldgs, & erons now standg & being upon the sd pce of ground (*e*), & erect & build thron in a substantial & workmanlike mner, with the best materials of their sevl kinds, & in conformity in every respt with plans, elevons, sections, & specificons already approved of & signed by the surveyor for the time being of the lessors, & under the inspon & to the satisfon of such surveyor, one messe of the first-rate class of bldg with all pper & suitable outbldgs, offices, convenices, & appurts, & shl expend in bldg such messe & premes not less than the sum of £——, the sd messe to be built & covered in on or bfe the —— day of ——, & to be completely finished fit for habiton on or bfe the —— day of ——, & shl not at any time during the term hby agrd to be grted erect or build, or permit to be erected or built, upon any pt of the sd pce of ground hby agrd to be demised any messe, bldg, or eron, not conformable to the plans & elevons previously approved & signed by the sd surveyor, nor make any alteron in the external elevon of the sd messe, bldgs, & erons, witht the previous consent in writg of the lessor. Tenant to pull down existing buildings and erect new ones.

3. ALL THE materials of the sd messe, bldgs, & erons wch are to be pulled down & removed as afsd shl become the absolute ppty of the tenant. Old materials to belong to tenant.

(*d*) A full form of lease should be given in preference to an epitome of the covenants and clauses, as the latter is less likely to lead to disputes, and is less protective to the lessor.

(*e*) As to hoardings see the Public Health Acts Amendment Act, 1890, 53 & 54 Vict. c. 59, s. 34.

PREC. XII.

Tenant not to create nuisance.

4. THE TENANT shl not during the progress of the works or aftwds create or allow any unnecy nuisce upon the sd premes.

Compliance with Building Acts, &c.

5. THE TENANT shl at his own expse in the exon of the works afsd comply in all respts with the Bldg & other Acts, & the regulons of the local authorities, & exte & do all works & things required by any such Acts or regulons relative thto, & pay & indemnify the lessor agst all fees, chges, penalties, claims, & expses to be made or incurred thrunder, or wch may be payable for obtaing the approval of the local authorities to any of the works or mres afsd.

Lessor may enter and view.

6. THE LESSOR or his agent may at all reasble times enter upon the sd premes & view the state & progress of the sd bldgs & works & the materials used & intd for use thrin.

Tenant not to assign.

7. THE TENANT shl not assn, sub-let or pt with the benefit of this agrmt witht the previous consent in writg of the lessor.

Power of re-entry.

8. PROVD ALWAYS that in case the sd messe & premes hby agrd to be erected shl not be erected & covered in & completely finished & made fit for habiton within the respive periods hinbfe limd for such respive pposes accdg to the stipulons hinbfe contd [in wch respt time shl be of the essce of this agrmt], or in case of any breach of any of the agrmts or stipulons hrin contd & on the pt of the tenant to be pformed or observed (*a*), [or in case any event shl happen upon wch the lessor wd be entld to re-enter upon the sd premes if the sd lease had been actually exted by virtue of the provo for re-entry to be thrin contd,] then & in any such case this agrmt shl, at the option of the lessor, cease & determine, & the lessor may re-enter upon and take posson of the sd pce of ground & premes togr with all bldgs & erons, materials, plant, & things thron (*b*), witht makg to the tenant any compenson or allowce for the same.

Option to lessors to extend

9. PROVD ALSO that in case any such default as afsd shl

(*a*) See *Lowther* v. *Heaver*, 41 Ch. D. 248.
(*b*) See p. 8, note (*c*); p. 10, note (*a*).

be made in erectg, coverg in, or completg the sd messe & premes within the respive periods afsd, & the lessor shl elect to enforce the specific pformce of the agrmt, he shl be entled to fix such extended period or periods for the erectg, coverg in, & completg resply of the sd messe & premes as he shl think fit, & in such case this agrmt shl be read & construed as if the period or periods so fixed had been origlly inserted hrin instead of the period or periods hinbfe fixed in that behalf.

time for completion.

10. THE SD LEASE shl be grted & the tenant shl accept the same & exte a counterpt thof when & so soon as the sd messe shl have been completely finished & made fit for habiton, & the other works hinbfe agrd to be exted by the tenant shl have been exted in accordce with the stipulons hinbfe contd, & a certfe to that effect, signed by the sd surveyor, shl have been produced to the lessor, such lease & counterpt to be prepared by the solor of the lessor at the expse of the tenant, who shl not require any abstract or evidce of the title of the lessor (*c*).

Lease to be executed on completion.

11. UNTIL SUCH lease shl be grted, the tenant shl be deemed to be tenant at will to the lessor at the rent agrd to be reserved thby, wch rent & all rates & taxes to become payable in respt of the sd pce of ground & premes, shl be pd by the tenant, & all covts & agrmts on his pt agrd to be

Until execution of lease, tenant to pay rent and perform covenants (*d*).

(*c*) See p. 788, note.

(*d*) If the contract to pay the rent, &c., until the lease is granted were absolute, the intended lessee would be bound by it, although no tenancy were created and he never took possession, *Marquis of Camden* v. *Batterbury*, 5 C. B. N. S. 808, 7 C. B. N. S. 864; *Adams* v. *Hagger*, 4 Q. B. D. 480. It has been usual in clauses of this kind expressly to negative the creation of a tenancy until the execution of the lease, and to provide that in the meantime a yearly sum equivalent to the rent should be paid and recoverable by distress as if it were rent; but a power of distress not being for rent is invalidated by the Bills of Sale Acts, see *Pulbrook* v. *Ashby*, 56 L. J. N. S., Q. B. D. 376; 35 W. R. 779, above, p. 748, note. It is better to provide, as above, that in the interim the intended lessee shall be tenant at will at the rent agreed to be reserved, which will carry with it the common law right of distress (*Anderson* v. *Midland Railway Company*, 30 L. J. Q. B. 94); and will also enable recourse to be had to the summary

As to excluding tenancy before lease granted.

PREC. XII.

contd in such lease shl so far as the same shl be applicable be pformed by the tenant as though such lease had been actually grted, & so that the lessor shl have & be entled to all such remedies by distress, action, & orwise, for recoverg rent in arrear, & for breach of any of the covts or agrmts afsd on the pt of the tenant, as if the sd lease had been grted.

Provision for death of tenant.

[12. In case the tenant shl die bfe the sd messe shl have been completely finished & made fit for habiton, & the other works hinbfe mentd shl have been exted accdg to the stipulons hinbfe contd, the lessor shl be entled at his option eir to require this agrmt to be pformed by the exs or ads of the tenant, or to determine this agrmt by givg a notice in writg in that behalf to such exs or ads, & in case he shl elect to determine the same he shl pay to the exs or ads of the tenant the amt wch shl be certified by the sd surveyor to have been pperly expended by the tenant in or about the bldg of the sd messe & the exon of the other works afsd after deductg the value of the old materials.]

Costs.

13. The costs of & incidental to the preparon & exon in duplicate of this agrmt, & of the sd lease & a counterpt thof, shl be borne & pd by the tenant. In wits, &c.

The Schdle above refd to.

[*Form of Lease.*]

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remedy for ejecting the tenant provided by the R. S. C., Order III., r. 6, and Order XIV., r. 1, which, if the relation of landlord and tenant were excluded, would not be available.

XIII.

AGREEMENT *for* BUILDING LEASES *with* VARIATIONS, *and* OPTION *to Lessee to* PURCHASE *the freehold* (*a*). PREC. XIII.

AGRMT made this —— day of ——- BETN A. of, &c., hinafter called the lessor, wch expression shl, &c., *as in last* Parties.

(*a*) The following clauses may be substituted for some of those in the text:— Variations.

"THE LESSOR hby agrees with the tenant to demise to him or his nominees at the times & in mner & subjt as hinafter mentd, ALL THAT pce of ground situate, &c., togr with the sevl houses intd to be erected thron with the appurts thof inclusive [exclusive] of the site of the intd roads, TO HOLD the same UNTO the tenant or his nominees for the term of ninety-nine yrs computed from the —— day of ——, Paying in respt of the sd pce of ground & premes the sevl yrly rents or sums follg (that is to say) from the date of this agrmt until the —— day of —— the rent or sum of £——, from the —— day of, &c., the rent or sum of ——, &c. (*increasg yrly till £—— is reached*), such respive rents or sums to be pd by eql qtrly paymts, &c. Agreement to demise. Parcels. Habendum.

THE TENANT shl build, &c., on the sd pce of ground as many private dwg-houses & shops as will produce when leased as hinbfe provd the sd total aggregate rent of £——. Tenant to build houses.

THE TENANT shl not be entled to require any lease to be grted to him or his nominees until he shl have built & roofed in the house or houses intd to be comprd in such lease, &c. Lease not to be granted before houses roofed (*b*).

THE TENANT shl be entled to a separate lease of any one or more not exceedg —— houses hby agrd to be built with the ground & appurts thto resply belonging at a fair apportioned pt of the sd rents to be approved by the lessor or his Tenant to have separate leases.

(*b*) See *Lowther* v. *Heaver*, 41 Ch. D. 248.

PREC. XIII.

precedent, of the one pt, & B., of, &c., hinafter called the tenant, wch expression shl, &c., of the other pt.

Tenant may enter and build.

1. THE TENANT may enter for the ppose only of bldg as hrin stipulated upon the pces or plots of ground & hds shown in the plan hto annexed & thrin coloured ——, situate in the parish of ——, & cty of ——, on the north side of a new road called or intd to be called, &c., & containg —— acres or thrabouts.

Tenant to build not less than — houses.

2. THE TENANT shl erect, cover in, & complete fit for habiton upon the sd pces of ground in a good & substantial mner, & with the best new materials of every description in accordce with plans, drawgs, elevons, & specificons already, *or*, "to be," approved of by the surveyor of the lessor, & to the reasble satisfon, in all respts, of such surveyor for the time being, not less than —— houses with pper & suitable offices & outbldgs, vaults, areas, drains, & fences, on the sites & in the posons marked out & indicated by boundary lines coloured —— in the sd plan, *or*, "to be approved by the sd surveyor."

Houses to be covered in within certain dates.

3. THE SD houses shl be erected & covered in within the times follg, namely [ten] thof bfe the —— day of —— now next, —— more bfe the —— day of ——, & the remaing —— bfe the —— day of ——, & every house shl be completely finished & ready for habiton within —— calr months after the time appted for coverg in.

Cost of houses (*a*).

4. THE TENANT shl expend in the eron of each house [in a main road] the sum of £—— at least in labour & materials [& of each house in other roads the sum of £—— at least, & questions as to wch are main roads to be settled by the sd surveyor.]

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surveyor, & to be not more in respt of the house or houses comprd in each lease than one —— pt of the rack-rent value thof when completed, nor less than £—— on any one lease."

(*a*) Under the Settled Land Act, 1882, if the land is leased in lots, the buildings must be of the yearly letting value of at least five times the ground rent; see s. 8, sub-sec. (3), (iii.); see *infra*, p. 804, note (*c*).

5. THE TENANT shl also at his own sole expse bfe the —— day of —— construct & make along the front of the sd pce of ground, coloured —— in the sd plan, to the satisfon of the sd surveyor, a pper roadway & pathway of the respive widths of —— feet & —— feet, *or*, "construct & make the roads shown on the sd plan & thron coloured —— with pper sewers thrunder & side junctions where required in accordce with plans & specificons to be approved by the sd surveyor & to his satisfon." PREC. XIII. Tenant to make a road.

6. THE TENANT shl repair & maintain, *or*, "pay & contribute a proportionate share of the expse of repairg & maintaing," the sd roads & foot-pavemts & main sewers [& lightg & waterg the roads,] until undertaken by the local authority, [such proportionate pt to be fixed by the sd surveyor, but not to exceed —— in the pound on the rateable value.] Tenant to pay share of expense of maintaining roads, &c.

7. THE SD houses shl be private dwg-houses only except that the tenant shl be at liberty to erect —— shops & no more, & one first-class hotel or tavern. As to class of houses.

8. THE TENANT shl not, durg the progress of the works or aftwds, set up any steam engine, or burn bricks or clay or cement, or create or allow any unnecy nuisce on the premes, or any pt thof. And no excavon shl be made, except for the ppose of digging foundons or makg sewers, & any gravel, chalk, or sand raised or dug up, shl not be disposed of or removed by the tenant, but shl be deposited for the use of the lessor as directed by the sd surveyor. Tenant not to cause a nuisance, &c.

9. *Complice with Buildg Acts, p.* 798, *clause* 5.

10. THE TENANT shl within one month after roofing in each house insure the same with the outbldgs thof agst fire in the —— Insce Office, or in some other office to be approved [appted] by the lessor to the amt of three-fourths of the value thof in the jt names of the lessor & tenant, *or*, "in such names as the lessor shl direct," & shl thrafter keep the same so insured & upon reqt produce to the lessor or his agent the policy & rect for the last premium of every such insce, &, in case of destron or damage by fire, shl Tenant to insure and expend insurance monies in rebuilding.

PREC. XIII. forthwith lay out the insce moys, & in case of the deficiency thof shl expend any further sums required in rebldg & reinstatg the same accdg to the origl plan & elevon thof previous to such fire.

11. *Power to lessor to enter & inspect bldgs, &c., as in last precedent, clause* 5 (*a*), *& not to assn as in last precedent, clause* 6.

Lessor to grant leases when houses finished.

12. WHEN & as each of the sd houses shl have been built & covered in [& the fence walls thof, & the area in front thof, & the gutters, stack pipes, & drains made & completed,] *or*, "shl have been completely finished ready for habiton," *or*, "the sum of £—— shl have been expended on each house," in accordce with the stipulons hinbfe contd, [& a certifte to that effect, signed by the sd surveyor, shl have been produced to the lessor], the lessor shl, by one or more deed or deeds, grt to the tenant, or his nominee or nominees, a lease or leases of such respive houses with the ground belongg thto, & the appurts thof, includg half the road or roads adjoing each house, *or*, "but exclusive of the roads," (*b*) For a term of ninety-nine yrs from the —— day of —— AT THE yrly rent for each house follg (namely), £—— for the yr endg the —— day of —— £—— for the yr endg, &c., & £—— p. a. for every other yr of the sd term, payable [qtrly] on the —— day of ——, &c., the first paymt to be made on the —— day of ——. And in the meantime, & until the sd respive rents shl commence, the sd respive leases shl be at the yrly rent of a peppercorn, &

Term.

Reservation of rent (*c*).

(*a*) If the tenant has only a power of entry to erect the buildings and no estate in the land until the leases are granted, this clause is unnecessary.

(*b*) See Elphinstone N. & C. Interp. Deeds, p. 183.

As to the rent to be reserved on building leases under Settled Land Act.

(*c*) As to the rent to be reserved on building leases granted under the Settled Land Act, 1882, see s. 7, sub-s. (2), and s. 8, sub-ss. (2) and (3); and especially the requirements of the latter sub-section where the land comprised in the building agreement is leased in lots. It is not easy to see the object of those requirements, and in some cases compliance with all of them would be impossible, if indeed they are not absolutely inconsistent with one another, or with s. 7 (2).

in case more than one house is comprd in a lease the lease shl be so framed as to make each house liable in respt of its own rent and covts only.

Form of leases (*d*).

13. SUCH LEASE shl be in the form, & contain the condons & provons set forth in the schdle hto, with such modificons (if any) as the deaths of pties & other circes may render necy.

Tenant not to call for lessor's title (*e*).

14. THE TENANT shl whenever required by the lessor accept & exte a counterpt of the lease or leases hby agrd to be grted upon the terms hrin expd, & shl not call for the title of the lessor.

Preparation and costs of leases.

15. THE SD LEASES & counterpts shl be prepared by the solor of the lessor at the cost of the tenant [such cost not to exceed £—— for each lease & counterpt, exclusive of stamp duty & plans [& the cost of registron] if one house only be included in the lease, & the further sum of £—— for every addonal house so included], *or*, "& all expses attendg the preparon & exon by all pties of this agrmt in duplicate, & of the sd sevl leases & counterpts shl be borne by the tenant."

When rent secured by some leases, remainder of premises to be let at nominal rent.

16. IF & WHEN leases shl have been grted to the tenant or his nominees of a sufft no. of houses to secure by the ground rents thby reserved the sd total aggregate rent of £——, the lessor shl, subjt to the provons & stipulons hrin contd, grt one or more lease or leases to the tenant or his nominees of the portions (if any) of the sd land remaing undemised togr with any house or houses erected thron (*f*) at the yrly rent of £1, or in case more than one such lease shl be grted then at the yrly rent of £1 for each such lease, & so that in case more than one house is comprd in any such lease such rent of £1 shl not be apportionable betn such houses PROVD that all the restrictive & other provons

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(*d*) See p. 797, note.

(*e*) See p. 782, note.

(*f*) If the agreement is entered into under the Settled Land Act, 1882, it is doubtful whether a "residue" lease could be granted of land not built upon, see *Re Sabin*, Weekly N. 1885, 197; Hood & Challis, p. 202.

PREC. XIII.

as to bldg & user of the premes & as to the form of lease & orwise wch are hrin contd & wch may be applicable shl apply to the land & houses leased under the psnt clause in the same mner as to the residue of the land & houses comprd in this agrmt.

Until leases granted, rent to be paid (*a*).

17. UNTIL LEASES shl have been grted of all the land hby agrd to be demised the tenant shl be deemed to be tenant at will to the lessor of such pt thof as from time to time shl remain undemised, & shl as far as circes will admit be liable & subjt to the same rents & other paymts, covts, restrons & provons as he wd be subjt to if a lease of such remaing pt psuant to the terms of this agrmt had been actually grted, & so that the lessor shl have all such rts & powers for the recovery of any arrears of rent or other moys wch may be due under this agrmt by distress on such undemised premes, & other usual means as if such lease had been grted.

Power to re-enter on default (*b*).

18. IF THE tenant shl make default in erectg, coverg in, & completg any of the sd houses within the respive times, & in mner afsd, or if the tenant or his nominee shl neglect or refuse to accept any of the sd leases, & exte a counterpt thof, or to pay the reasble chges for preparg the same, within one calr month after he shl be reqted so to do by or on the pt of the lessor, [in any of wch respts time shl be of the essence of this agrmt], *or*, "shl in any respt fail to pform or observe this agrmt," then & in any such case the lessor shl be at liberty to re-enter upon & take posson of such pt of the sd premes whof a lease or leases shl not have been grted as afsd, & all bldgs, erons, & bldg materials, & plant thron (*c*), witht makg to the tenant any compenson or allowce in respt thof, & this agrmt shl thrupon as to the premes so re-entered upon cease, but such rt of re-entry shl be deemed a cumulative remedy, & shl not prejudice any rt of action or other remedy of the lessor for the recovery of any rent or moys due to him from the tenant, or in respt of any breach by the tenant of this agrmt.

(*a*) See p. 799, note.
(*b*) See p. 764, note (*a*).
(*c*) See p. 8, note (*c*).

PREC. XIII.

Recital.

AND WHAS it has been agrd that the tenant shl have the option of pchasg the freehd of the sd pces of land at any time within —— yrs from the date hrof, at the price & under the condons hinafter mentd, if he, the tenant, shl have duly pformed the agrmts on his pt hinbfe contd: NOW IT IS HBY FURTHER AGRD,

Agreement.

Power for tenant to purchase the freehold (*d*).

19. IN CASE the tenant shl within —— yrs from the date of this agrmt give to the lessor —— calr months' notice of the desire of the tenant to pchase all the pces of land hinbfe mentd, or such of them as shl be specified in such notice, & shl up to the date of such notice, & subseqtly to the time of such sale, have duly pformed the agrmts on the pt of the tenant hrin contd, the lessor shl sell to the tenant the inhance in fee simple in posson, free from incumbces, of the sd pces of land, or such of them as shl have been specified in such notice, with any bldgs wch may be thron, at the price or sum for the whole of the sd pces of land of £—— (being twenty-five yrs' pchase of the sd total rent of £——

(*d*) Compare the form at p. 770, and see the note thereto; and as to leases under the Settled Land Acts, see the Act of 1889, 52 & 53 Vict. c. 36. The following provision is sometimes inserted to be substituted for that in the text:—

Option to lessor to purchase improved ground rents.

"In case the tenant shl grt or agree to grt any underlease or underleases of any pt or pts of the sd land, & any house or houses erected thron, at an improved ground-rent, the tenant shl forthwith offer to sell every such improved ground-rent to the lessor at a price eql to twenty yrs' pchase of such rent, & on his acceptce of such offer, & on paymt of the sd pchase-moy shl assn the same to him, or as he shl direct. But in case the lessor shl decline to pchase any such improved ground-rent the tenant, in case he shl duly pform & observe this agrmt up to that time, shl be entled to have a convce of the freehd intt of the lessor in the land comprd in the underlease reservg such improved ground-rent, with any bldgs thron, at the price or sum," &c., *as in the text, & add any of the other clauses in the text wch are appropriate.*

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hinbfe made payable), togr with intt on the sd sum of £—— as from the date of the expiron of such notice & up to the time of complon, & so on in proportion for any portion less than the whole, accdg to the quantity of land pchased, & subjt to the condons hinafter expd.

Purchase money for any portion not to be less than £ ——.

20. THE TENANT may avail himself of the sd option of pchasg as to portions of the sd land, & at different times, but so that on each occasion (except the last, when the pchase-moy shl be the residue of the pchase-moy for the whole) the pchase-moy shl not be less than £——, & on the complon of each separate pchase the rent for the remr of the land shl be reduced by a sum equivalent to four p.c. on the pchase-moy pd.

Title to freehold accepted.

21. THE TITLE of the lessor as owner in fee simple free from incumbs of the premes up to the exon of this agrmt shl be considered as accepted, & the lessor shl not be under any obligon to enquire into the title to the leasehd intt hby created or be under any liability by reason of any defect or want of title in the lessee or pson to whom such sale & assurce as afsd is made.

22. *Add any special condons required as in ordinary cases, see* CONTRACT FOR SALE.

Deeds of conveyance to be executed in duplicate, and to contain restrictive covenants (*a*).

23. THE DEED or deeds of convce shl be exted in duplicate, & shl contain covts on the pt of the pchaser framed so as to be bindg as far as may be on all psons claimg under him for the proton of the vendor & his adjoing este coloured —— on the sd plan, as follows, *specify restrictive covts*, & shl also contain such other provons as may be reasbly required by

(*a*) As to the frame of such covenants, see pp. 311, 466, *et seq.*

(*b*) The following is a form of clauses in an agreement for building leases as to advances to be made by the lessor to the tenant as the buildings progress; the charge in brackets would make the agreement subject to *ad valorem* duty as a mortgage, but (being equitable) only at the rate of 1*s.* per cent. under the Stamp Act, 1891, Schedule, MORTGAGE.

Advances by lessor to tenant.

"THE LESSOR shl durg the progress of the sd bldgs & works make advces to the tenant, at intt, in mner, & to the extent provd in the schdle hto, & the tenant shl repay to the lessor all moys wch shl be so advced, with the intt thron, &

the lessor for preservg & securg the observce & pformce of such covts. PREC. XIII.

[24. *Arbitron clause*, p. 771.] IN WITS, &c. (*b*).

[The Schdle above refd to.

Form of Lease.]

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all costs incurred by him in respt of such advces within —— yrs from the date of this agrmt." [*If the tenant has any intt in the ppty wch is capable of being chged bfe the leases are grted, add,* " & such moys, intt, & costs shl until repaymt be a chge on the intt, if any, of the tenant in the premes hby agrd to be demised."] Provd that the lessor shl not be obliged to make any such advces except to the tenant psonally & in the event of his assng the benefit of this agrmt or death such obligon shl cease.

" WHEN & as each of the sd messes shl have been fully completed, ready for habiton, in accordce with this agrmt, & a certife to that effect signed by the sd surveyor shl have been produced to the lessor, & so soon as all moys advced on that messe, & the intt thron, & all costs incurred in respt of such advce, shl have been duly pd to the lessor, but not bfe, the lessor shl by deed grt, &c., *remr of clause* 12, *as to grantg leases*, p. 804.

" The Schle above refd to."

" WHEN EACH house is covered in, & the brick parton below completed, and the wooden framg for the partons above fixed, the sash-frames built in, the external walls completed, & the chimneys & chimney-pots put on, the sum of £ —— per house to be advced at intt at the rate of —— p. c. p. a. payable half-yrly."

" WHEN EACH house is finished accdg to this agrmt, & ready for habiton, with all necy stoves, fixtures, & fittgs, pperly fixed, & the fences completed, & the drains pperly made & connected, the further sum of £—— per house, to be advced at intt at the like rate payable half-yrly."

" THE TOTAL advces not to exceed at one time £——, exclusive of intt."

(*b*) See note (*b*), p. 808.

XIV.

PREC. XIV.

LEASE *made in* PURSUANCE *of a Covenant for* RENEWAL *by Joint Tenants of* COPYHOLDS *under* LICENCE *with Covenant for* RENEWAL.

PARTIES, A. & B. (hinafter called the lessors, wch expression, &c., *see* p. 734), 1 : C. (hinafter called the lessee, wch
Witnesseth. expression, &c.), 2. WITNETH that in psuance of the covt in this behalf contd in a certain indre of lease, dated, &c., & made, &c., & in conson of the yrly rents & covts & agrmts on the pt of the lessee hinafter reserved & contd, & by virtue of a licence obtd from the lord of the manor of
Demise. ——, the lessors do resply hby demise unto the lessee, *pcels*,
Parcels. to wch sd premes the lessors were admitted at a ct holden for the sd manor on the —— day of —— on the surrender
Habendum. of X. : TO HOLD the same premes UNTO the lessee, from the —— day of ——, for the term of —— yrs ; *Reservon of rent*, p. 740 ; *Covts by lessee, here insert the pper covts ; Provo for re-entry*, p. 764. *Covts by lessors, for quiet enjoymt*,
Covenants by lessors. p. 762 : AND THAT they, the lessors, or their assns, will,
To apply for licence to grant renewed lease, previous to the expiron of the sd term of —— yrs, endeavour to procure a licence from the lord of the sd manor of —— to demise the sd premes hby demised for the further term of —— yrs, to commce from the expiron of the sd
and to execute renewed lease, term hby grted, & will, after they have obtd such licence, exte anor lease of the sd premes to the lessee, for such further term of —— yrs ; but in case the lord of the sd manor shl refuse to grt such licence, then that the lessors will endeavour to obtain a licence to demise the sd premes for such shorter term as the sd lord shl be disposed to grt, & after such licence shl be procured, will exte a further lease of the sd demised premes to the lessee, for such further term as shl be mentd in such licence to commce from the
and further renewals. expiron of the term hby grted : AND WILL, from time to time until the term of —— yrs from the commcemt of this

psnt demise shl be run out, endeavour to obtain a licence to grt a further lease or leases of the sd premes unto the lessee, & will grt such lease or leases accdly until the whole of the sd term of —— yrs shl be run out; but in case the sd lord of the sd manor shl refuse to grt any such licence, then that the lessors will, from time to time until the sd term of —— yrs shl be run out, grt such further leases of the sd premes unto the lessee, as by the custom of the sd manor they may be warranted in doing witht incurrg a forfeiture of the sd premes, so as to complete the sd term of —— yrs as afsd; all such licences to be obtd by & at the expse of the lessors, & every new lease & the counterpt thof to be prepared by the lessors at the expse of the lessee, & to be at the same rent & subjt to the same covts & condons as are contd in these psnts, except the covt for renewal, but to contain in lieu thof such covt for renewal as the circes of the case may require: And the lessee hby covts with the lessors, that the lessee will duly exte & deliver to the lessors a counterpt of every such new lease. Provd always that in the event of the sd copyhd premes being enfranchised, then the covt for renewal hinbfe contd shl take effect as an absolute covt: Provd also, that in the event of a re-entry by the lessors under the provo or condon in that behalf hinbfe contd, then the sd covt for renewal shl become void. In wits, &c. (*a*).

On failure to obtain licences to grant such renewals as they can.

Costs of renewals.

Covenant by lessee to execute counterparts.

Proviso in case of enfranchisement.

(*a*) As to the frame of a lease by trustees under a covenant for perpetual renewal, see p. 763, note; and as to covenants for renewal, see p. 763, note.

XV.

PREC. XV.

LEASE *for twenty-one years of a* VILLA *and Land* (*a*) *in the* COUNTRY, *part being* FREEHOLD *and part* COPYHOLD. *The* LICENCE *of the* LORD *of the Manor* NOT *having been* OBTAINED (*b*).

PARTIES, A. (hinafter, &c., see p. 734), 1; B. (hinafter, &c.), 2. WITNETH, *demise to the lessee of freehds & copyhds:* TO HOLD all such pts of the sd premes as are of freehd tenure, UNTO the lessee, for the term of twenty-one yrs from the date of these psnts: AND TO HOLD all such pts of the sd premes as are of copyhd tenure, UNTO the lessee, for the term of one whole yr from the date of these psnts (*c*). *Reservon of rents*, p. 740. *The covts by the lessee will be the same as in Precedent* VIII. *with the follg varions; in the covt to paint the outside say* "of the sd house, stables, & outbldgs," *in the covt to keep in repair, add after the words,* "walls, fences," *the words,* "posts, pales, rails;" *add also covt to maintain garden & pleasure grounds*, p. 747; *if necy, covts as to cultivon, &c., of arable or meadow land* (*if any*) *see* LEASES (AGRICULTURAL); *not to commit waste*, p. 755; [*not to burn bricks, &c.*]; *Power of re-entry*, p. 764; *Lessor's covt for quiet enjoymt*, p. 762: AND ALSO will at the expiron of the term of one yr, for wch the sd copyhd premes are demised, if this demise shl not have been determined under the power of re-entry hinbfe contd, at the reqt of the lessee, by deed grt, if the licence of the lord or lady of the sd manor can be obtd, a lease of the sd copyhd premes for a term expirg on the —— day of ——, *the end of the twenty-one yrs*, but if such licence cannot be obtd, then, if & so

Witnesseth.

Habendum for freeholds to lessee for twenty-one years.

For copyholds to lessee for one year.

Covenant by lessor for renewal of copyhold lease.

(*a*) As to the land, see the Agricultural Holdings Act, 1883; and as to small holdings, 50 & 51 Vict. c. 26; and *infra*, LEASES (AGRICULTURAL).

(*b*) For variations, see Precedent VIII., p. 789.

(*c*) A copyholder cannot in most manors grant a lease for more than one year without licence from the lord.

far as the custom of the sd manor will admit, a further lease of the sd copyhd premes for the term of one yr, & so on at the expiron of every yr until the —— day of ——, *i.e, one yr bfe the expiron of the term of twenty-one yrs,* unless these psnts shl have been sooner determined by re-entry under the power in that behalf hinbfe contd, & every such lease shl operate in such mner that the whole of the sd premes hby demised shl be held under & subjt to the same rents, covts, & condons as are hby & hrin reserved & contd so far as the same shl be applicable. And the lessee shl exte a counterpt of every such lease, wch togr with the counterpt shl be prepared by the solors of the lessor at the cost of the lessee. In wits, &c. PREC. XV.

XVI.

AGREEMENT *for* Lease *of a* Public House. A Premium *being paid by the* Lessee, *and secured by* Mortgage. PREC. XVI.

Parties, A. of, &c., hinafter called the lessor, 1 : B. of, &c., hinafter called the lessee, 2.

Whby it is agrd as follows :—

1. The lessor shl grt & the lessee shl take a lease of All that public-house or tavern known as —— with the back yard belonging thto, situate at, &c., togr with the fixtures, fittings, utensils, & things now in or upon the same, from the —— day of ——, For the term of —— yrs, At the yrly rent of £—— payable qtrly on the usual qtr days, the first paymt to be made on, &c., And in conson of the premium of £—— payable by the lessee as hinafter mentd. Agreement for lease.

2. The lessor hby acknowes the rect from the lessee by way of deposit of £—— pt of the sd premium, & £—— further pt of the sd premium shl be pd by the lessee to the Payment of premium.

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lessor on the —— day of ——, & £—— the residue thof shl be secd to the lessor by a mtge of the sd lease & the trade & other fixtures & fittings on the demised premes (*a*).

Lease.

3. THE SD LEASE & a counterpt thof to be exted by the lessee, & the sd mtge shl be prepared by Mr. —— of ——, the solor of the lessor & shl be in the forms usually adopted by the lessor for such respive instrumts, with such varions as the case may require (*b*). The lessee shl pay the costs [not exceedg £—— exclusive of stamp duty] of & incident to this agrmt & the sd lease & counterpt & mtge.

Enquiries as to solvency of lessee.

4. THE LESSOR shl forthwith make enquiries into the character & solvency of the lessee who hby names Mr. —— of ——, & Mr. —— of —— as his referces. If the result of such enquiries shl in the opinion of the lessor be unsatisfactory, he shl be at liberty to rescind this agrmt & thrupon shl return to the lessee the sd deposit after deductg £—— for expses.

Forfeiture on non-performance of agreement.

5. IF THE LESSEE fail to pform this agrmt he shl forfeit to the lessor the sd deposit, & shl also pay to the lessor the sum of £—— as liquidated damages. IN WITS, &c.

XVII.

PREC. XVII.

LEASE *of a* PUBLIC HOUSE *by a firm of* BREWERS. *A* PREMIUM *being paid by the* LESSEE.

PARTIES, A. & B., tradg under the name or firm of, &c. (hinafter called the lessors, wch expression, &c., *see* p. 734), 1; C., licensed victualler (hinafter called the lessee, wch expression, &c.), 2: WITNETH that in consn, as well of

Witnesseth.

(*a*) See *infra*, p. 816, note (*a*).

(*b*) Covenants personally to reside and conduct the business, and not to assign without licence, were held not to be usual covenants; *Re Lander*, [1892] 3 Ch. 41.

the sum of £—— on the exon hrof pd by the lessee to the lessors (the rect whof is hby acknowed), as also of the rents, covts, & condons, &c., the lessors do, & each of them doth, hby demise unto the lessee, ALL THAT messe or tavern, with the outbldgs, yard, & appurts thto belongg, called The ——, situate, &c., TOGR WITH the fixtures & fittgs specified in the schdle hrunder written, & togr with the licences now or hrafter attached to the premes for keepg the same open as a tavern or public-house ; *habendum*, p. 740 ; *reservon of rent*, p. 740. AND ALSO, *insce rent, mutatis mutandis*, p. 743. AND ALSO as a further rent the sum of £—— in any & every yr in wch the lessee shl (contrary to his covt hinafter contd) (*c*). PREC. XVII. Demise. Parcels. Penal rent for selling liquors not supplied by lessors

(*c*) As to contracts binding the lessee to deal with the lessor, see 5 Dav. Prec., p. 135, note ; *Luker* v. *Dennis*, 7 Ch. D. 227 ; *Edwick* v. *Hawkes*, 18 Ch. D. 199 ; *Clegg* v. *Hands*, 44 Ch. D. 503. Where the brewers are mortgagees in possession, they ought not to let the house as tied, and may be surcharged the extra rent they might have obtained by letting it free ; *White* v. *City of London Brewery Co.*, 39 Ch. D. 559 ; 42 Ch. D. 237. Sometimes a larger rent, including the penal rent, is reserved, with a proviso for its reduction so long as the lessee performs his covenant to deal exclusively with the lessors, as follows :

"PROVD ALWAYS that if & so long as the lessee shl (psuant to his covt hinafter contd) pchase from & deal with the lessor, &c., for, all the porter, &c., wch shl be consumed, sold, or disposed of in or upon or sent from the sd demised premes the lessor shl be entled to deduct from each qtrly paymt of the sd rent, the sum of £——." Proviso for reduction of rent if lessee deals with lessor.

Sometimes a penal rent is reserved in respect of breaches of covenant generally, see p. 743, form IX.

The following is another form of penalty for breach of the above covenant :—

"THE LESSEE will pay to the lessors for all malt liquors, &c., pchased from any pson other than the lessors a sum eql to —— p. c. of the invoice price usually chged by the lessors for goods or articles of a like class & description, accdg to the prices set forth in the schdle hto, as & for liquidated damages, & not as a penalty, wch sum or damages shl be payable by the lessee forthwith on demand in writg of paymt throf being made by the lessors." Lessee to pay liquidated damages for selling liquors not supplied by lessors.

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directly or indirectly deal with any pson or psons other than the lessors, or their successors in business [or nominees] for any porter, stout, ale, beer, or other malt liquors, [British & foreign spirituous liquors, cordials & compounds of every description] wch shl be sold or disposed of or consumed in or upon the sd demised premes, or shl be brought upon the sd premes to be so sold, disposed of or consumed, or in wch yr the lessee shl sell or dispose of, or permit the sale, disposal, or consumption upon the sd premes of any such articles other than such as shl have been pchased or taken of the lessors, or their succors in business [or nominees], every such last-mentd addonal rent to become payable on the qtrly day for paymt of rent under this demise next ensuing after such dealing, sale, disposal, or consumption as afsd, & to be pd qtrly durg the residue of the then current yr, & all the sd rents to be pd witht any dedon whatever (except the landlord's ppty tax) (*a*). *Covts by lessee to pay rents*, p. 744; *rates &*

As to power of distress for liquors supplied.

(*a*) The common clause givg the brewer a power of distress for non-payment of the debt for liquors supplied has been determined to be wholly void under the Bills of Sale Acts, 1878 and 1882; *Pulbrook* v. *Ashby*, 56 L. J. N. S. Q. B. D., 376; 35 W. R. 779. This power is therefore omitted and a charge on the leasehold interest and tenant's fixtures substituted (see p. 819). Other methods which have been suggested for creating an implied right of distress are (a) to reserve a higher nominal rent reducible on payment of the debt for liquors, or (b) to reserve moneys due on the liquor account as additional rent, as below; but both these must be regarded as experiments having regard to s. 6 of the Bills of Sale Act, 1878; see as to the construction of that section, *Pulbrook* v. *Ashby, ubi supra*; *Re Willis*, 21 Q. B. D. 384.

Reservation of such moneys by way of rent.

"AND ALSO as a further rent all moys to become due to the lessors from the lessee for any porter, &c., *as above*, wch shl be supplied by the lessors to the lessee during the sd term, such last-mentd rent to become due immedly on such articles being supplied, & to be taken in or towards satisfon of such moys."

Another expedient is to require a deposit, as in the following clause:—

Provision for deposit by lessee.

"BFE ENTERG into posson of the sd premes the lessee shl deposit with the lessors as secy for the paymt of any moys

taxes, p. 744; *to repay sums pd for insce by lessor*, p. 751, of "the sd messe & outbldgs & the fixtures & fittgs specified in the schdle hto, & all other fixtures & fittgs, includg trade fixtures & fittgs, wch may at any time durg the sd term be placed or be in or upon the demised premes agst loss or damage by fire & for insurg the plate-glass windows & mirrors of & in the sd premes agst loss or damage by accident, every such sum to be so repd on demand immedly after the expenditure thof." *Not to do anything to avoid policy agst fire or accident*, p. 753, *form* XXV., *mutatis mutandis*; *to paint outside, saying*, "wood & iron work includg all sign boards," p. 745; *to repair*, p. 746, *saying*, "fixtures & fittgs specified in the schdle hto, & any other fixtures & fittgs wch may be placed in or upon the sd premes durg the continuce of the sd term includg trade fixtures & fittgs & all sign or other boards & placards relatg to the business of a licensed victualler as carried on by the lessee, or to the business of a brewer as carried on by the lessors": AND ALSO will from time to time & at all times durg the sd term forthwith replace & reinstate any of the sd fixtures & fittgs & sign or other boards & placards wch shl become worn out, broken, damaged, destroyed, or lost, by new articles of the same kind & quality: PROVD ALWAYS that this covt shl not oblige the lessee to replace any plate-glass windows or mirrors wch shl be broken by accident within

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To repay sums paid for insurance.

To repair.

To replace fittings, &c.

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wch may at any time become owing by the lessee to the lessors for rent or for goods supplied, or for damages or orwise howsr, & also as a secy for the due pformce of the lessee's covts in other respts the sum of £——, wch sum shl remain so deposited until the end of the tenancy, but shl not carry intt in favour of the lessee, & the lessors shl be entled to retain the sd deposit intact until the end of the tenancy, & shl not be bound to apply the same or any pt thof in paymt or dischge of any moys owing from the lessee, but shl be at full liberty to pursue & enforce any other remedies available for the recovery of any such moys."

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the meaning of any policy of assurce agst loss or damage by accident effected by the lessors psuant to their covt in that behalf hinafter contd; *to deliver up in good repair*, p. 749, *saying*, "the sd fixtures & fittgs, & all sign & other boards & placards"; *to permit lessor to enter & view & to repair on notice*, p. 749; *power to lessor to repair on default of lessee*, p. 750; *power to lessor to enter & take inventories of fixtures*, p. 750, *saying*, "fixtures & fittgs, sign & other boards & placards"; *not to make alterons*, p. 754; *not to assn or underlet*, p. 757; & will not durg the sd term give any bill of sale or preferential secy on his goods or effects witht the written consent of the lessors; AND ALSO will at all times durg the sd term reside upon the demised premes & psonally carry on the business of a licensed victualler thron so long as the necy licences can be procured: AND ALSO that the lessee will apply for & use his best endeavours to obtain the necy licences or renewal of licences for openg & keepg open the sd premes durg the sd tenancy as a tavern & public-house duly licensed for the sale & consumption thrin of ale, beer, wine, & spirits by retail, & will pay the excise duties for the sd licences: AND ALSO that the lessee will keep open the sd premes for the sale of the articles afsd at all times durg the greatest number of days & greatest number of hours that shl be allowed by law, & use his best endeavours to increase & extend the custom & business of the sd house: AND WILL at all times manage & conduct the business thof in a lful, orderly, & pper mner: AND WILL not permit any gamg, riotg, or other disorderly practices thrin or do or suffer anything whby the sd licences or any of them may be or become liable to be forfeited or suspended, or the renewal thof withheld, or whby the sd trade or business or the goodwill thof may in any way be or be liable to be prejudicially affected, or commit any offence agst the laws for the time being in force affectg publicans or licensed victuallers, it being expressly agrd that any conviction of the lessee (whether endorsed on the licence or

Not to give bill of sale.

To reside.

Covenants by lessee to obtain licences.

To keep house open.

Conduct business properly.

Not do acts to forfeit licences.

not) (*a*) for any offence agst the Licensing Acts, 1872 to 1874, or any statutes for the time being in force regulatg the trade of licensed victuallers, or any notice or complaint given or made by any justice of the peace or by the superintendent or actg superintendent for the time being of any police force or the inhabitants of the sd parish as to the conduct or managemt of the sd house & premes, shl be conclusive evidce of a breach of this psnt covt: AND ALSO that the lessee will use the sd premes durg the sd tenancy as a tavern or licensed victuallg house only, & for no other ppose, so long as the necy licences can be obtd: AND WILL not do or suffer to be done upon the sd premes anything wch may be or grow to the damage or annoyce of the lessors [& will not brew or permit to be brewed upon or about the sd premes, any beer, ale, porter, or other malt liquors]: AND ALSO that the lessee will deal exclusively with the lessors or their successors in business [or nominees] for all porter, &c., *as above*, wch shl be sold or consumed upon the sd premes or shl be brought thron to be so sold or consumed: AND WILL not on any pretence whatsr pchase, take in, or rece, or have in his posson, or directly or indirectly sell or dispose of or permit the sale, disposal, or consumption in or upon the said premes of any such articles other than such as shl have been pchased or taken of the lessors, or their succors in business [or nominees], provd they shl be willing to supply the same to the lessee at the fair market price (*b*), & the fact of any barrel other than such as are supplied by the lessors being upon the sd demised premes (whether empty or not) shl be conclusive evidce of a breach of this covt: AND FURTHER that the lessors shl be entled to a chge on the intt of the tenant in the sd demised premes & the tenant's fixtures (if any) now or for the time

Use premises only as public-house.

Not cause annoyance.

Not to brew.

Deal with lessors only.

Lessors to have charge for goods supplied (*c*).

(*a*) See *Wooler* v. *Knott*, 1 Ex. D. 124, 265; *Fleetwood* v. *Hull*, 23 Q. B. D. 39. A covenant to insure the excise licences with a company doing that class of business might be added.

(*b*) See *Luker* v. *Dennis*, 7 Ch. D. 227; *Edwick* v. *Hawkes*, 18 Ch. D. 199.

(*c*) See p. 816, note. As to fixtures, see the Bills of Sale Act, 1878, s. 4 (2), and s. 7. This charge, though equitable only, being by deed,

As to charge for goods supplied.

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being thrin (but excludg psonal chattels within the meang of the Bills of Sale Acts, 1878 & 1882) for the amt from time to time owing from the lessee to the lessors for goods supplied: AND ALSO that the lessee will permit the lessors, or any pson appted by them, at any time to enter & inspect all cellars, vaults, or stores belonging to or in the occupon of the lessee (wheresr situate), & the stock of ale, beer, porter, or malt [or spirituous] liquors in the same, & also to inspect & examine the books & accts of the business carried on by the lessee upon the sd premes: AND WILL pay & settle with the lessors or their succors in business for all articles & things supplied by them to the lessee once in every calr month or oftener if required durg the sd term: AND ALSO will at the expiron or sooner determinon of the sd term deliver up to the lessors, or their nominees or nominee, & do all necy acts for transferrg to them or him the then existg licences (magisterial & excise), on being pd the fair proportion for the unexpired term thof: AND THAT such licences if not so delivered & transferred shl be considered as lost or wilfully withheld by the holder thof so that the magistrates may rece a copy thof under the 41st section of the Licensing Act, 1872: AND WILL also sign any notices, & make any applicons for the transfer or renewal of the licences wch the lessors may require: AND WILL at his own expse attend, if required bfe the justices in pson, & consent to any such transfer or renewal: AND THAT it shl be lful for the lessors or any pson apptd by them in that behalf, & they, or he, are, or is hby irrevocably empowered to apply for & sign, give, & do in the name & as the agents or agent of the lessee, all notices & acts necy for obtaing such transfer or renewal as afsd as the case may be, & on the hearg of any such applicon the prodon of these

Permit lessors to enter and view and to examine accounts.

To pay monthly.

On expiration of term to transfer licences.

Make applications for renewal of licences.

Power for lessors to apply for renewal of licences.

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will carry with it the remedies conferred by the Conv. Act, 1881, s. 19; see definition of "mortgage" in s. 2. The clause subjects the deed to a mortgage stamp in addition to the lease stamp; but at the rate of 1s. per cent. only under the Stamp Act, 1891, sched. "Mortgage"; and see s. 88 (2) as to mortgages for unascertained amounts.

psnts shl be conclusive evidce agst the lessee of his consent to such transfer or renewal being made, & he shl not be at liberty then or thrafter to oppose or question such transfer or grt (*a*) : AND ALSO that the lessors may at any time remove any sign or other boards & placards affixed to the sd premes, whether externally or internally, & may at any time affix thto such sign or other boards & placards with such inscriptions thron as they may think fit & that the lessee will not remove, efface, alter, or intermeddle with the same, or affix any other sign or other boards or placards to the sd premes : *Provo for re-entry in case of non-paymt of rent, or breach of covt, or bkptcy, &c.* (*b*), " or if the lessee shl be convicted of any offence agst any of the laws affectg publicans or licensed victuallers," p. 764 (*c*). *Covt by lessors for quiet enjoymt*, p. 762 ; *to insure*, " the sd demised messe & premes includg the fixtures & fittgs specified in the schedule hto, & any other fixtures & fittgs wch may at any time durg the sd term be affixed to the demised premes with the consent of the lessors, includg trade fixtures & fittgs," *agst fire*, " & the plate-glass windows & mirrors agst loss or damage by accident," p. 751, *mutatis mutandis ;* & that the lessors will durg the sd term supply the lessee with such beer, ale, porter, & other malt liquors as he may require, but not after the lessee shl have contracted a debt to them for goods supplied to the amt of £—— until such debt shl be fully pd & satisfied. IN WITS, &c.

Power for lessors to alter signs.

Covenants by lessors.

To insure.

To supply beer.

[*Schdle of Fixtures, &c.*]

The Schedle above refd to.

(*a*) See *Garrett* v. *Justices of Middlesex*, 12 Q. B. D. 620.

(*b*) The power given to the Court by s. 14 of the Conv. Act, 1881, to relieve against forfeiture of a lease for breach of covenant, &c., is, by sub-s. (6), not to extend to a covenant or condition against assignment, &c., or to a condition for forfeiture on bankruptcy or taking in execution ; and the provision in the Conv. Act, 1892, 55 & 56 Vict. c. 13, s. 2, sub-s. (2), by which sub-s. 6 of the former Act is qualified, does not apply to public houses or beershops, see sub-s. (3) (*c*).

As to power of Court to relieve against forfeiture of lease.

(*c*) As to the omission of the power to effect a forcible entry, which is frequently found in such leases, see above, p. 766, note.

XVIII.

PREC. XVIII.

LEASE, *with the* CONCURRENCE *of several distinct sets of* MORTGAGEES, *of* FREEHOLDS, *used as a* BREWERY, *and of* FREEHOLD *and* LEASEHOLD PUBLIC-HOUSES. A RECEIVER *of the Rents being appointed on behalf of the Mortgagees.* PROVISIONS *for keeping up* VALUE *of* BREWERY PLANT (*a*).

PARTIES, the sevl sets of mtgees of the first four parts; A. (hinafter called the lessor, wch expression, &c., *see* p. 734), 5; B. & C. (hinafter called the lessees, wch expression, &c.), 6; D., *recer*, 7: WHAS the lessor is entled to the freehd hds descd in the first schdle hto for an este in fee simple, & to the leasehd hds descd in the sd first schdle for the respive residues of the sevl terms expirg at the dates thrin mentd, subjt as regards the sd hds to the mtges or chges descd in the second schdle hto [some of wch affect the whole & others pts only of the sd hds]; & the sd mtge debts are now resply vested in the sevl psons whose names are written in the second column of the sd second schdle opposite the description of instrumt by wch each such mtge or chge was affected, wch last-mentd psons are the same psons as the pties hto of the first four pts & are hinafter collectively refd to as the mtgees (wch expression shl, where the context so admits, include their respive hrs, exs, ads, & assns); AND WHAS the hds descd in the first pt of the sd first schdle are now used as a brewery, known as the —— Brewery, & are hinafter refd to as the brewery, & the hds descd in the second pt of such first schdle are public-houses, pchased or taken on lease by the lessor, & the same are hinafter refd to as the public-houses: AND WHAS the lessor is also entled to the coppers, boilers, engines, machy, plant,

Recitals.

Title of lessor.

Premises used as brewery and public-houses.

Title of lessor to plant.

(*a*) For other forms of leases by mortgagor and mortgagee, see the next Precedent and LEASES MISCELLANEOUS.

& effects, now affixed to the soil of the brewery, subjt so far as the same are included thrin to the sd mtges & chges [or some of them]: AND WHAS the lessor has agrd to grt the lease hby effected to the lessees, & the mtgees have agrd to join in these psnts for the pposes & in the mner hinafter appearg: NOW THIS INDRE, &c., *conson*, they, the mtgees, [so far as relates to the hds & premes comprd in their sevl secs], at the reqt (hby testified) of the lessor, do & each & every of them doth hby demise, & the lessor doth hby demise & confirm unto the lessees, ALL & SINGR the sd freehd & leasehd hds & premes descd in the first schdle hto, togr with the use of ALL & SINGR the coppers, boilers, engines, machy, plant, & effects, now fixed to the soil of the brewery, TO HOLD all such pts of the sd premes as are of freehd tenure, & such of the sd coppers, boilers, engines, machy, plant & effects, as are affixed thto, & all such pts of the sd premes as consist of leasehds held for terms of yrs of wch the respive unexpired residues exceed twenty-one yrs, UNTO the lessees, for the term of twenty-one yrs from the day next bfe the day of the date of these psnts, but subjt as to the sd leasehd premes to the rents & covts affectg the same resply: AND TO HOLD all such pts of the sd premes as consist of leasehds held for terms of yrs of wch the respive unexpired residues do not exceed twenty-one yrs, UNTO the lessees, for the unexpired residues of the sevl terms for wch the same are now resply held, except the last day of each such term, subjt to the rents & covts affectg the sd last-mentd leasehd premes: *Reservon of rent gently* (*b*), p. 740. *Covts by lessees*, "with the mtgees & each of them, & also separately with the lessor, & also separately with the sd D., as such recer of rents as hinafter mentd, or other the recer or recers for the time being to be appted as

PREC. XVIII.

Agreement for lease.

Witnesseth.

Demise.

Parcels.

Habendum as to freeholds, and leaseholds held for more than twenty-one years.

To lessees for twenty-one years.

Habendum as to leaseholds held for less than twenty-one years.

To lessees for residue of terms less the last day.

Covenants by lessees (*c*).

(*b*) If the mortgages affect different parts of the hereditaments, the hereditaments affected by each mortgage should be placed in a separate schedule and a separate rent reserved in respect of the hereditaments in each schedule.

(*c*) See another form in the next Precedent.

PREC. XVIII.

To keep in repair.

hinafter mentd," *to pay rent*, p. 744; *to pay rates & taxes*, p. 744; *to keep in repair*, "the messes, bldgs, & erons hby demised, & any new bldgs & erons wch may be placed on the sd premes during the continuce of this demise, & also all & singr the coppers, boilers, engines, machy, plant, & effects now or wch may at any time during this demise be affixed to the brewery, so that such coppers & other things as last afsd may at all times be eql in value to the sum of £—— at the least," p. 746: *to deliver up at end of tenancy in good repair*, "unto the pson or psons then entled to the immediate revon of the sd respive demised premes," p. 749:

Perform covenants in head leases.

AND ALSO will from time to time, & at all times during this demise, pay, pform, & observe all & singr the rents & covts on the pt of the sevl lessees, & condons reserved by & contd in the sevl indres of lease, under wch the sd leasehd premes are held;

And indemnify lessor against such covenants.

AND WILL keep the mtgees, & the lessor, & every of them, indemnified agst all actions, pedgs, costs, chges, claims, & demands whatsr, by reason or on acct of the non-paymt, non-observce, or non-pformce of the same rents, covts & condons, or any of them; *to permit*, "the mtgees & the lessor, & every of them, & the sd D. as such recer as hinafter mentd, or other the recer or recers for the time being to be appted as hinafter is mentd," *to enter & view the premes, & to repair on notice*, p. 749; *with power to the mtgees or lessor to repair on default of lessees*, p. 750; *to insure & rebuild in case of fire*, p. 751.

Carry on business.

AND ALSO will at all times during this demise carry on the business of brewers on the brewery:

Use public houses for no other purpose.

AND FURTHER that the lessees will not at any time convert or suffer to be converted the public-houses or beer-houses hby demised, or any of them, or any pt thof resply, into shops or warehouses, or open or use the same, or suffer the same to be opened or used, for any other ppose than as an hotel, inn, public-house, tavern, or beer-house, witht the consent in writg of the lessor, & also will use their best endeavours in order that the sd public-houses & beer-houses may at all times be kept & conducted in a regular & pper mner in every respt:

Not to forfeit licences.

AND THAT the lessees will not do or omit any act, & will use their best endeavours to prevent

any act being done or omitted whby the licences for the vendg of [wines, spirituous liquors,] ale & beer in the sd public-houses or beer-houses may become forfeited, or the renewal thof refused: And also will at all times use their best endeavours to cause the business of the sd sevl public-houses & beer-houses to be managed or conducted under the sevl names or signs whby the same are now resply known: And will, upon the determinon of this demise (if required), use their best endeavours to procure that the sd sevl licences grted durg the then current yr for the vendg of any [wines, spirituous liquors,] ale, or beer in the sd demised public-houses or beer-houses, may be assned for the unexpired terms thof to the pson or psons then entled, &c., *as above*, or as he or they shl direct; *Provo that the lessees may*, from time to time durg the continuce of this demise, for the ppose of improvg the brewery, vary, alter, or exchange all or any pt of the coppers, boilers, engines, machy, plant, & effects, wch now are or may hrafter be affixed to the brewery, provd that every such copper, &c., wch may at any time be varied, &c., as afsd, be forthwith replaced or improved, so & in such mner that the coppers, &c., for the time being affixed to the brewery may be kept & maintained in good & efficient condon for the pper workg & carryg on of the brewery business, & eql in value to the sum of £—— at the least. *Powers of re-entry & distress grted to mtgees, lessor, & recer*, pp. 764, 767: And each of them, the mtgees & lessor, so far only as relates to his own acts & deeds & the acts & deeds of all psons claimg under him, doth hby for himself, &c., *continue covt for quiet enjoymt*, p. 762, *saying*, "witht any lful interruption or disturbce from or by the mtgees & lessor or any of them, or any pson or psons claimg or to claim under or in trust for them, him, or any of them." *Apptmt by mtgees & lessor of D. as recer, see* Mtges, *the mtgees covtg to concur in the apptmt of a new recer if necy*: And it is hby agrd & decld betn the lessor & lessees that the lessor shl, within two calr months from the determinon of this lease, whether the same shl determine by effluxion of

PREC. XVIII.

Carry on public-houses under present signs.

On determination of term transfer licences.

Power to lessees to alter plant.

Covenant for quiet enjoyment.

On determination lessor to purchase public-houses

PREC. XVIII.

bought by lessees.

Power for lessees to demise purchased public-houses.

Power to lessees to sell such houses.

Provision for lessor taking over plant on determination of term.

time or orwise, pchase all public-houses of any tenure wch may have been pchased or taken on lease by the lessees for the ppses of the brewery at a fair valuon: PROVD THAT nothing hrin contd shl prevent the lessees, at any time prior to the determinon of this lease, from demisg at rack-rent any of the sd public-houses, & such pchase as afsd to be made by the lessor shl be subjt to every such lease: PROVD ALSO that nothing hrin contd shl prevent the lessees from sellg any of the sd pchased public-houses at any time bfe this lease shl have determined by re-entry, or bfe the —— day of ——, *i.e., a yr bfe the end of term*, wchever shl first happen; *Agrmt betn the lessor & lessees*, that immedly after the determinon of the term hby grted, whether the same shl happen by effluxion of time or orwise, a valuon shl be made of all new bldgs & improvemts to bldgs erected or made by the lessees, & of all coppers, &c., on the brewery, & in case the amt of such valuon shl exceed the sum of £——, then the amt of such excess shl be immedly pd by the lessor to the lessees, but if such amt shl be less than the sum of £——, then the amt of such deficiency shl be immedly pd by the lessees to the pson or psons entled, &c., *as above*. IN WITS, &c.

[*Two Schdles.*]

XIX.

PREC. XIX.

LEASE *of a* MILL *and fixed and moveable* MACHINERY *with the* CONCURRENCE *of* MORTGAGEES *of* PART *of the Property.*

PARTIES, A. & B. (hinafter called the mtgees, wch expression shl, where the context so admits, include their hrs, exs, ads, & assns), 1; C. (hinafter called the lessor, wch expression shl, &c., include his hrs, exs, ads, & assns), 2; D., E. & F. (hinafter called the lessees, wch expression shl,

&c.), 3; WHAS the lessor being seised in fee simple in pos- PREC. XIX.
son of the mill, machy, & effects first & secondly hinafter descd, subjt to a mtge thof in fee simple to the mtgees, & being the owner of the machy & effects thirdly hinafter descd, has agrd to grt a lease thof to the lessees for the term & in mner hinafter mentd, & the mtgees have agrd, at the reqt of the lessor, to join in mner hinafter appearg in the demise of the sd premes first & secondly hinafter descd: NOW THIS INDRE, &c., *demise by mtgees*, "so far as regards the premes first & secondly hinafter descd at the reqt of the lessor," *& by lessor as regards*, "all the premes hinafter descd," *of*, First: ALL THAT mill called —— Mill, situate, *&c.*, with the warehouse, boiler-house, & engine-house, chimney, & reservoir, belonging or contiguous thto, in the occupon of ——, *reference to map:* TOGR WITH the water & other privileges & appurts belonging to the sd premes: Secondly, ALL & SINGR the engine, boiler, shafting, upright & horizontal main gearg, & other the machy & effects annexed to the soil & freehd of the sd mill & premes, the parlars whof are specified in the first schdle hrunder written: & Thirdly, ALL & SINGR the steam or power looms, windg machine, warpg mills, beamg frames, & other the machy & effects wch are not affixed to the soil & freehd of the sd mill & premes, the parlars whof are specified in the second schdle hto, *habendum*, to the lessees, from —— for the term of —— yrs determinable nevs as hinafter mentd, p. 740: PAYG yrly durg the sd term hby grted, & so in proportion for any less time than a yr, to the mtgees, for & in respt of the sd premes first & secondly hinbfe demised, the rent of £——: AND PAYG to the lessor for & in respt of the sd premes thirdly hinbfe demised, the rent of £——, *&c.*, the sd sevl rents of £—— & £——, to be pd, *&c.*, p. 740; *Covts by lessees*, "with the mtgees, & also separately with the

Recital of lessor's title.

Witnesseth. Demise.

Parcels.

Reservation of separate rents of property in and not in mortgage (*a*).

Covenants by lessees.

(*a*) If the plant, &c., be of small value, it may be better to reserve a peppercorn in respect of it, and to throw the whole rent on the land and fixtures.

PREC. XIX.

lessor," *to pay*, "unto the mtgees, & unto the lessor, the sd sevl yrly rents," p. 744; *to pay rates & taxes*, p. 744; *to repair*, "except the roofs, outer walls, & ppal timbers of the demised premes, & save & except in the case of fire, storm, or tempest affectg the premes first & secondly hinbfe demised," (*a*) p. 746; *special covts as to paintg; to deliver up at end of tenancy in good repair*, "unto the mtgees & the lessor resply," p. 749; *to permit* "the mtgees as regards the sd premes first & secondly hinbfe demised, & the lessor as regards the sd premes thirdly hinbfe demised," *to enter & view & repair on notice*, p. 749; *to permit* "the mtgees as regards, &c., & the lessor as regards, &c.," *as above, to repair on default of lessee*, p. 750; *to insure premes thirdly demised*, p. 751; AND WILL at all times keep on the sd premes stock of double the value of one yr's rent: AND THAT, fourteen days bfe the expiron or other sooner determinon of the term hby grted, a pper estimate or valuon shl be made as betn the mtgees & the lessees, of the sum or sums required to put the sd premes first & secondly hinbfe demised into such good repair, order, & condon as they ought to be left in accdg to the covts hinbfe contd: AND THAT the lessees will forthwith pay to the mtgees the amt of such estimate or valuon wch shl be recoverable as liquidated damages; *Similar covts by lessees with lessor as to valuon of the* "premes thirdly hinbfe demised," *& paymt of valuon; Power to lessees to determine lease at end of first —— yrs on givg six months' notice to mtgees as to first & secondly demised premes, & to lessor as to thirdly demised premes*, p. 768: PROVD ALWAYS that, until the mtgees shl require paymt of the sd rent of £——, *the rent reserved to the mtgees*, to them, & give to the lessees, or leave at the countg-house on the demised premes, a notice in writg requirg such paymt, the sd rent of £—— shl be pd

To keep stock.

Valuation of dilapidations to be made fourteen days before the expiration of the term.

To pay sums awarded.

Until notice given by mortgagees rents to be paid to lessor (*b*.)

(*a*) Another form is, to repair "all the internal pts of the sd premes except the floors & main & other shaftg, gearg & fixtures belonging to the lessors, damage by fire excepted."

(*b*) See the Judicature Act, 1873, s. 25 (5).

to the lessor, & his rect shl be a sufft dischge for the same, & he may give any notice & appt any valuer hby authorised to be given or appted by the mtgees; *Provo that on non-paymt of,* "the sd yrly rents of £——, & £——, or any pt thof resply," *or on breach of covt, or on the bkptcy, &c., &c., of the lessees* "eir the mtgees or the lessor, as regards the premes first & secondly hinbfe demised, & the lessor as regards the premes thirdly hinbfe demised, or any pson or psons duly authorized by them or him resply, may re-enter," &c., p. 765; *Covt by lessor with lessees to repair,* "the roofs, outer walls, & ppal timbers of the demised premes," p. 746, *form* VIII., *modified; to insure,* "the premes first & secondly hinbfe demised," p. 761: AND WILL at the end or other sooner determinon of the sd term take & pchase from the lessees all the workg stk upon the sd demised premes at a valuon as workg stk: *Power to lessor to pchase machy,* p. 769: *Provo for cesser of rent on destron by fire,* "or tempest," p. 767: *Arbitron,* p. 771: AND EACH of them the mtgees & lessor so far as relates to his own acts & deeds & the acts & deeds of psons claimg through or under him, the mtgees covtg only as regards the sd premes first & secondly hinbfe demised, & the lessor covtg as regards all the demised premes, doth hby, &c., *covt for quiet enjoymt witht interruption by,* "the mtgees & lessor or any of them, or any pson, &c.," p. 762. IN WITS, &c.

Power of re-entry.

Covenants by lessor

To purchase working stock at determination of lease.

Covenant for quiet enjoyment.

[*The Schdles.*]

XX.

LEASE *of* ROOMS *in a* FACTORY, *with the use of* STEAM POWER.

PARTIES, A. & B. (hinafter called the lessors, wch expression, &c., *see* p. 734, *note*), 1; C. (hinafter called the lessee, wch expression, &c.), 2. WITNETH, *demise by lessors to*

Witnesseth.

PREC. XX.

Parcels.

lessee of, ALL THAT room, being & constitutg the ground floor or lowest story of & in a mill or bldg, situate, &c.: And also ALL THOSE three rooms constitutg the first, second, & third storeys of & in a bldg, &c.: AND ALSO steam power for the pper & effectual turng & workg of power looms & other machy eql to such an amt of horse power, not exceedg in the whole 15-horse power, as the lessee may from time to time require: AND ALSO steam sufft for heatg the sd rooms hby demised [& for the preparon of the yarn previous to its being woven]: WITH free liberty for the lessee & his servants & workmen at all seasonable times to use the staircase of the sd mill in common with the lessors & their tenants, servants, & workmen, *habendum*, p. 740: PAYG therefor yrly durg the sd term hby grted, & so in proportion for any period less than a yr, the rents follg, that is to say, the yrly rent of £——, AND ALSO for each qtr of a yr endg on one of the usual qtr days, durg wch the lessee shl at any time use more than 12-horse power & less than 14-horse power, the addonal rent of £—— for each horse-power or fraction of horse-power exceedg 12-horse power, AND FOR each qtr of a yr endg as afsd, durg wch the lessee shl at any time use 14-horse power & upwards, the addonal rent of £——, [& also for each qtr of a yr endg as afsd durg wch the price of coal delivered at —— afsd shl exceed 10*s.* per ton, an addonal rent calculated at the rate of —— p.c. on the sd fixed rent hby reserved for every complete 1*s.* on the cost per ton of coal in excess of 10*s.* per ton], the sd fixed rent of £—— p.a. to be payable in advce (*a*) by eql qtrly paymts, &c., & the paymt of the addonal rents, if any, accrug in each qtr to be made at the qtr-day endg such qtr, & all such fixed & addonal rents to be pd witht any dedon, except for landlord's ppty tax; *Covts by lessee to pay rents*, p. 744; *to keep in repair*, "the internal pts of the sd demised rooms & premes, damage by natural decay, fire, or tempest alone excepted,"

Reservation of rents.

Extra rent according to price of coal.

Covenants by lessee.

(*a*) In leases of this nature the rent is generally made payable in advance.

p. 746 ; *to deliver up in repair*, p. 749 ; *to permit lessors to enter & view premes & to repair on notice*, p. 749 ; *to permit lessors to repair on default of lessee*, p. 750. *Power of re-entry*, p. 764. *Provo for cesser of rents on destron by fire*, p. 767 : PROVD ALSO that if at any time durg the continuce of the sd term hby grted, steam power shl not be duly supplied to the lessee accdg to the covt in that behalf hinafter contd, owing to the steam engine or main shaftg requirg repair, then & durg that time a proportionate pt of the addonal rents orwise becomg payable durg the qtr shl be remitted. *Covt by lessors to pay taxes*, p. 750 : AND FURTHER that the lessors will at all times, except on Sundays, Christmas Day, Good Friday, Bank Holidays, & any other day wch may be observed as a genl holiday, durg the continuce of the sd term from six o'clock in the morning until six o'clock in the evening, or as many hours per day as shl from time to time be allowed by law for workg in factories, but on Saturdays until one o'clock only, [unless prevented by strikes (*c*) & combons of workmen, or by a lockout made with the concurce of the associon of, &c.] at their own expse, provide & maintain steam power not exceedg 15-horse power, sufft for the pper & effectual turng & workg such power looms & other machy as the lessee shl affix or set up in or upon the

Proviso for cesser of rent on deficiency of steam power (*b*).

Covenant by lessors to provide steam power for working looms.

(*b*) The following is another form :—

"PROVD that the lessors shl not be held liable in damages for or in consequce of any stoppage of the machy belongg to the lessee occasd by any defect in or accident to the boilers, steam-engines, main shaftg, or other apparatus belonging to the lessors, nor shl any cesson or diminon in the sd rent be allowed or claimed in consequce of any such defect or accident unless such stoppage shl take place for more than seven days in any one yr, in wch case a dedon shl take place in the sd rent proportionate to the excess of such stoppage over seven days in any one yr, wch dedon shl be taken to be in full of all claims for damages by the lessee agst the lessors."

Provision for stoppage of machinery.

(*c*) As to strikes, see *Stephens* v. *Harris*, 56 L. J. Q. B. 516.

PREC. XX.

Keep main shaft going —— revolutions per minute.

Provide steam to heat rooms and yarn.

Keep gearing in repair.

sd premes hby demised or any pt thof: [AND ALSO will at all such times as afsd keep the main shaft in the lower room of the sd mill to —— revolons per minute, the no. of such revolons being ascertained in the usual mner by a timepiece to be placed in a conspicuous pt of the premes, & to be provd, fixed, & regulated at the expse of the lessee:] AND ALSO will durg the sd term provide steam sufft for heatg the sd rooms hby demised, & for the preparon of the yarn previous to its being woven, & for producg artificial humidity of the atmosphere psuant to the Cotton Cloth Factories Act, 1889 (*a*): AND ALSO will durg the sd term keep the main mill gearg in the lower room of the sd mill, & the main upright shaftg in the sd three rooms of the sd bldg, in good & sufft repair & workg order, *& to keep in repair*, "the outside walls, floors, & roofs hby demised & the sd staircase hinbfe mentd," p. 746, *slightly altered, for quiet enjoymt*, p. 762. *Arbitron clause*, p. 771. IN WITS, &c.

(*a*) 52 & 53 Vict. c. 62.

LEASES (AGRICULTURAL) (*a*).

RESERVATIONS (*b*).

1. EXCEPT & RESERVG unto the lessor all timber, timber-like trees, tellers & saplings likely to become timber [& the bodies of all pollards, & the tops & lops of all such trees as have never been topped or lopped as pollards], now standg or growg, or wch durg the term hby grted may be standg or

Reservation of timber (*c*).

(*a*) See the Agricultural Holdings (England) Act, 1883, 46 & 47 Vict. c. 61, and note thereon, *infra*, p. 847; as to small holdings (cottage gardens and allotments), 50 & 51 Vict. cc. 26 & 48; and as to the acquisition by county councils of land, and adaptation and disposal thereof for small holdings (exceeding one acre but not exceeding fifty acres, or if exceeding fifty acres of an annual value for income-tax purposes not exceeding £50), see the Small Holdings Act, 1892, 55 & 56 Vict. c. 31. In preparing leases or agreements for yearly tenancies of farms, the following points must be attended to:—*First*. Is the tenant to be bound to use any special rotation of crops, and, in particular, is he to be bound to do so in the last year, or last two years of the term? *Second*. Is he to treat the meadow-land in any particular manner? *Third*. If there are underwoods, is he to be restricted as to cutting them? *Fourth*. Whether it is desirable to fix by the lease, or to leave to subsequent agreement or arbitration the terms of compensation payable for unexhausted improvements under the Agricultural Holdings (England) Act, 1883; or to insert compensation provisions into the lease in substitution for those in the Act; see note, *infra*, p. 847. As to whether the Agricultural Holdings Act, 1883, applies to tenancies for one year certain, see 36 Sol. J. 358, 365.

As to agricultural leases.

Under 14 & 15 Vict. c. 25, s. 1, an agricultural lease by a tenant for life, though invalid against those entitled in remainder, is good for one year after the lessor's death. See further as to leases by limited owners, *ante*, p. 772.

(*b*) See also, p. 739, *et seq.*

(*c*) For distinction between "timber" and "underwood," see Dart, p. 148.

growg, upon the sd demised premes, or any pt thof [with free liberty of ingress, egress, & regress, way, & passage for the lessor, his agents, servants, & workmen, at all reasble times to view, grub up, fell & cut down, & with horses, cattle, & carts, & orwise, to take & carry away the sd timber & other trees [& pollards], & the tops & lops thof, & for such pposes to make & erect all necy sheds & sawpits & other convenices on the sd demised premes, doing no wilful spoil or damage to the corn, grass, hay, or other crops of the lessee, & payg to him a fair compenson for all damage actually done, the amt thof in case of dispute to be settled by arbitron].

Reservation of minerals (*a*).

II. EXCEPT & RESERVG unto the lessor all [coal, ironstone, ores, quarries, stone, brick-earth, sand, gravel, & other] mines & minls in, under, or upon the sd premes or any pt thof [with free liberty of ingress, egress, & regress, way & passage for the lessor, his agents, servants, & workmen, to dig, search for, get, dress, make merchantable, & carry away the sd [coal, &c., *as above*, & other] mines & minls, & for the sevl pposes afsd to sink such pits & shafts, & to make & erect such engines, machy, bldgs, erons, works, & convenices, on the sd demised premes as may be requisite or convenient, doing no wilful spoil, &c., *as in last form*].

Reservation of timber and minerals. Short form.

III. EXCEPT & RESERVG to the lessor all timber & other trees, & all mines & minls, with free access to cut, work, & carry away the same resply.

Reservation of sporting (*b*). Full form.

IV. EXCEPT & RESERVG to the lessor, subjt to the provons of the Ground Game Act, 1880 (*c*), all game [woodcocks,

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Meaning of "mines" and "minerals."

(*a*) As to the meaning of "mines" and "minerals," see *Hext* v. *Gill*, 7 Ch. 699; *Tucker* v. *Linger*, 8 App. Cas. 508; *Bell* v. *Wilson*, 1 Ch. 303; *Att.-Gen. for Isle of Man* v. *Mylchreest*, 4 App. Cas. 294; *Midland Ry. Co.* v. *Haunchwood Brick and Tile Co.*, 20 Ch. D. 552; *Lord Provost of Glasgow* v. *Farie*, 13 App. Cas. 657; *Earl of Jersey* v. *Neath Union*, 22 Q. B. D. 555; *Midland Ry. Co.* v. *Robinson*, 15 App. Cas. 19; Elph. N. & C. Interp. Deeds, p. 603.

(*b*) As to the lessor's liability for injury to crops from overstocking with game, see *Farrer* v. *Nelson*, 15 Q. B. D. 258.

(*c*) 43 & 44 Vict. c. 47.

snipes, quails, landrails (*d*)], wild fowl, rabbits, & fish, with the exclusive rt for him, & all psons authorised by him, at all times, of preservg the same, & of huntg, shootg, fishg, coursg, & sportg, over & on the sd demised premes.

v. RESERVG to the lessor, subjt to the provons of the Ground Game Act, 1880, the exclusive rt to all game & rabbits, & to preserve the same on the premes, with liberty to shoot, fish, hunt, course, & sport thron. The same. Short form.

REDDENDUM (*e*).

1. AND ALSO PAYG in like mner the further yrly rent of £—— for every acre of meadow-land, & so in proportion for any less quantity than an acre, wch shl at any time be ploughed, broken up, sown, or converted into tillage, witht the consent in writg of the lessor, or his agent, such addonal rent to commce from the happeng of the event on wch the same is to arise, & to be payable on the qtrly days afsd durg the then residue of the term hby grted. Penal rents for meadow land broken up (*f*).

(*d*) The birds included in the brackets are not game, see the Game Act, 1 & 2 Will. IV. c. 32, s. 3, but are within the Game Licence Act, 23 & 24 Vict. c. 90.

(*e*) See p. 740; and see the recent statutory restrictions on the right of distress for rent referred to p. 740, note; especially the Agricultural Holdings (England) Act, 1883, ss. 44—47; and see 51 & 52 Vict. c. 21, which by s. 9 repeals ss. 49—52 of the former Act; and the following decisions on the Act of 1882, *London, &c., Bank* v. *Belton*, 15 Q. B. D. 457; *Ex parte Bull*, 18 Q. B. D. 642; *Masters* v. *Green*, 20 Q. B. D. 807. As to right of distress.

A provision is often inserted making moneys (other than rent) becoming due to the lessor recoverable by distress in the same manner as rent in arrear, but as such a provision is invalidated by the Bills of Sale Acts (see p. 816, note), it is omitted in these forms. A clause is also sometimes inserted extending the ordinary power of distress for rent to things not distrainable at common law; but this also, whether applying to movable chattels or fixtures, is avoided by the same Acts. As to effect of Bills of Sale Acts on power of distress.

By s. 43 of the Act of 1883, where the lease is granted under a power requiring the best rent to be reserved, the increase in the value of the holding arising from improvements made or paid for by the tenant need not be taken into account. As to best rent.

(*f*) See also p. 743, and the note.

Do. for improper cultivation.

II. And an addonal rent of £—— for every acre, & so in proportion for any less quantity than an acre, of arable land wch shl at any time be cultivated orwise than accdg to the covts hinafter contd witht the consent in writg of the lessor, or his agent, such addonal rent, &c., *as in last form.*

Do. for improvements not notified by lessee (*a*).

III. And a further yrly rent of £—— for every acre of land on wch improvemts shl be exted by the lessee in respt whof compenson may be payable under these psnts or by statute, & of the parlars of wch the lessee shl fail to deliver to the lessor or his agent such statemt in writg as hinafter covted to be delivered previously to the —— day of —— next follg or in reference to wch the lessee shl when required by the lessor as hinafter provd refuse or neglect to produce full vouchers & rects for the same, such addonal rent of £——, to commce, &c., *as in form* I.

Do. for removing manure.

IV. And an addonal rent of £—— for every ton of hay, straw, manure, or root crops, wch shl at any time durg the continuce of this demise, be removed from the demised premes witht the consent in writg of the lessor, or his agent, such last-mentd addonal rent to be payable on such qtrly days afsd as shl first happen after the happeng of the event on wch the same is made payable, but not to continue as a periodical paymt.

Additional rent for improvements by lessor.

V. And also payg in like mner such further rent as shl be eql to £5 p.c. p.a. upon all moys & expses [over the sum of £——] wch may be laid out or incurred by the lessor at the reqt of the lessee, in or incidental to the erectg of any new bldg or the re-bldg or addg to existg bldgs on or in underdraing or orwise improvg the sd demised premes; such last-mentd rent to commce & be payable from the half-yrly day for paymt of rent wch shl happen next after the day on wch any moys or expses shl be so laid out or incurred.

Rents to be paid clear of deductions (*b*).

VI. The sd rent [sevl rents] to be pd clear of all dedons, except landlord's ppty tax [& land tax, & except the

(*a*) See covenant, *infra*, p. 843.

(*b*) As to the set off of compensation due to the tenant, see the Agricultural Holdings (England) Act, 1883, s. 47. By the Tithe Act, 1891, 54

excess of any scot (*c*) or drainage-rate over ——*s.* per acre in any one yr].

LESSEE'S COVENANTS (*d*).

To repair and paint.

1. And also will [on being allowed by the lessor rough timber, lime for mortar, bricks, & tiles for that ppose on the sd premes or within —— miles thof] at all times durg the sd term keep in good repair & condon the farmhouse & all farm bldgs, cottages, barns, sheds, & other erons, gates, stiles, bridges, culverts, ditches, watercourses, walls, fences & hedges for the time being on the demised premes: And will at least once in every —— yrs durg the sd term, or oftener if necy, paint or tar such pts of the same as have been usually painted or tarred. *See Prec.* III., *clause* 9, p. 859.

The same. Another form.

2. And also will at all times durg the sd term keep the bldgs, gates & fences of the sd premes in pper repair [damage by fire & tempest excepted], being allowed half the cost of such repairs, except for thatched bldgs the roofs of wch shl be repaired entirely at the expse of the lessee: And will at all times durg the sd term paint the internal woodwork of the farmhouse at least once in every ten yrs, & the outside of the farmhouse, & such pts of the bldgs as have

Vict. c. 8, tithe rent-charge is, after the 26th March, 1891, the date of the passing of that Act, made payable by the owner, and an agreement since that date for its payment by the occupier is void (s. 1); but the Act does not apply (see s. 9) to a rent-charge payable under the Extraordinary Tithe Redemption Act, 1886, nor a rent-charge payable under the Tithe Act, 1860, in respect of tithe on any gated or stinted pasture, nor to a rate for each head of cattle turned on common land. Such charges may therefore still be agreed to be paid by the occupier and deducted from the rent.

(*c*) Some such provision appears proper in cases of fen or marsh lands, where, owing to a breach in the sea walls, or dykes, a large scot may have to be levied.

(*d*) For the commencement of the covenants, and the covenants to pay rent, and rates and taxes, see p. 744.

usually been painted, once in every five yrs with two good coats of oil-paint, & will tar the other outside woodwork of the farm bldgs once in every ten yrs, being allowed half the cost of such paintg & tarrg.

To clean out ditches.

III. AND ALSO will throughout the sd term clean out at least once durg every yr in a pper mner, & keep in good order all the ditches, watercourses, sluices, sewers, & drains belonging to the demised premes.

Pay for draining.

IV. AND ALSO will, on the lessor supplying on the sd demised premes, or within —— miles thof, pper pipes, pay for all labour, & other expses, in draing the sd land [being allowed such compenson for the same at the expiron of the tenancy as is provd by the scale contd in the schdle hto (*a*), & so that the notice required by the 4th section of the Agricultural Holdings (England) Act, 1883, is hby dispensed with]. And further that no pipe-drain shl, witht the consent in writg of the lessor, or his agent, be laid at a less depth than —— feet from the surface of the ground, & that every such pipe-drain shl communicate with a ditch.

Not to alter condition of premises.

V. AND ALSO will not witht the consent in writg of the lessor or his agent, materially alter the psnt laying out, arrangemt, or condon of the sd demised premes.

To reside.

VI. AND ALSO will at all times durg the sd term reside at the farmhouse on the demised premes unless authorised in writg by the lessor or his agent not to do so.

To cultivate according to custom (*b*).

VII. AND ALSO will cultivate & manage all the demised premes in accordce with the best & most improved, *or*, "the four-course," *or*, "five-course" system of husbandry as practised or in use in the coy of —— [so far as such system may not be inconsistent with any of the special provons

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(*a*) If the general provision as to compensation, *infra*, p. 851, is adopted, say "such compenson for the same as is hby & by statute provd." See the Act of 1883, ss. 4, 55; and as to set-off by the landlord, see s. 6; and see note, p. 847.

(*b*) The following clauses as to the mode of cultivation are for the most part common; but the exact provisions must depend on the local custom, or the circumstances of each case. For other forms, see the Precedents.

hrin contd], & will keep the land clean & in good heart & condon.

VIII. AND WILL in all respts cultivate & manage the farm & lands hby demised & every pt thof in a good, pper, & husbandlike mner, accdg to the best rules of husbandry practised in the neighbourhood (*c*). The same. Another form.

IX. AND WILL not grow more than two crops of white corn, or any two crops of the same kind in immediate succession: AND WILL not after notice to quit has been given or reced take a second white straw crop off the same land wch has borne such a crop in the precedg yr witht such consent as afsd: AND WILL sow not less than one-sixth pt of the arable land with a pper proportion of clover & grass seeds in each & every yr along with the first crop after summer fallow turnips or other fallow crop. Special provisions as to arable land.

X. AND ALSO will not grow hemp, flax, teazles, or woad, or any other unusual or exhaustg crops on the demised premes witht the previous consent in writg of the lessor or his agent, nor witht such consent leave for seed in any yr on the demised premes any turnips, cole, rape, mangold, mustard, or rye grass, or any plants of a like nature, except so much thof as may be necy for seeding the demised premes from yr to yr. Not to cultivate specified crops.

XI. AND ALSO will not plough, break up, pare or burn any old pasture or meadow or land permanently laid down in grass, or mow or cut for hay any [more than —— acres in any one yr, nor the same pce oftener than once in three yrs] of the meadow-land under a penalty of £100 per acre for every acre ploughed, broken up, pared or burnt, & of £50 per acre for every acre mown contrary to this provon, & so in proportion for a less quantity, & will keep the same free from thistles, nettles, & rushes, & ant & mole-hills. For cultivation of pasture meadows.

XII. AND ALSO will consume all the hay, straw, fodder, To consume hay, &c.,

(*c*) As to the conversion of arable or pasture lands into market gardens, and erecting glass houses, if profitable, and usual in the neighbourhood, not being a breach of this covenant, and as to "ameliorating waste" generally, see *Meux* v. *Cobley*, [1892] 2 Ch. 253.

on the premises (*a*).

haulm, turnips, mangolds, & other root crops on the premes, or leave the same at feedg price for the incomg tenant, & will in every yr carry out & spread at pper times, & in a husband-like mner, on the demised premes all dung & muck produced by the consumption of the same.

To keep up a flock of mountain sheep.

XIII. AND ALSO will at all times keep up a flock of at least —— mountain sheep & lambs, bred & grazed on the demised premes, & will at the end of the tenancy transfer the same to the lessor or the incomg tenant at a valuon.

To replace fruit-trees

XIV. AND ALSO will preserve all fruit-trees in the orchards or elsewhere on the sd demised premes, & will plant such good & healthy young fruit-trees as may be required to supply the place of those wch may die or go to decay, or become unproductive, so as to keep the sd orchards well & sufftly stocked with fruit-trees.

Not to cut underwood except at usual intervals.

XV. AND ALSO will not cut coppice or underwood, except at the usual season accdg to the custom of the country, & will not cut out any coppice or underwood of less than —— yrs growth, & will give ten days' notice in writg to the lessor or his agent, of the intention to cut the same, so as to enable him to mark any tellers.

To preserve trees, &c.

XVI. AND ALSO will preserve all trees, tellers, pollards, & saplings for the time being standg or growg on the demised premes from bite of cattle or other injury, & will not cut down, fell or destroy, or top, lop, or prune any such trees, tellers, pollards, & saplings [under the penalty of £—— for every such tree, teller, pollard, or sapling, to be pd in addon to the actual amt of damage done as afsd, & to be recoverable immedly].

To preserve hedges and plantations.

XVII. AND ALSO will from time to time durg this demise plash or cut & lay the hedges regularly & in pper season, & stub all borders of hedges, & will, when & so often as he shl new make or cut any of the hedges or fences on the sd

(*a*) As to the bankruptcy of the lessee, see *Lybbe* v. *Hart*, 29 Ch. D. 8. As to whether such a covenant runs with the land, see *per Baggallay*, L.J., *ib.* p. 19, dissented from in *Clegg* v. *Hands*, 44 Ch. D. 503, at p. 512, by Cotton and Lopes, L.JJ.

demised premes, at his own expse, dig & make good ditches on the side of such hedges or fences in the usual mner, [& also will at the like expse make & maintain good & sufft wire (*b*), *or*, "rly," *or*, "temporary" fences for preservg any such new made hedges & fences, & the young springs thof from any hurt or damage by cattle or orwise], [& will not cut any hedges (*c*), plantons, or pollards till they are of the age of —— yrs, except such hedges & pollards as shl be clipped yrly, & also will at all times give ten days' notice in writg to the lessor or his agent, of the intention to cut any hedges, fences, or plantons, so as to enable him to mark such tellers as he may think fit to be left growg for timber].

The same.

Another form.

XVIII. AND ALSO will at all times durg the sd term keep all the hedges & fences in good condon, & will yrly at the pper season clip such of the hedges as have been usually clipped.

To preserve minerals, and not to commit waste (*d*).

XIX. AND ALSO will not raise or remove, or suffer to be raised or removed, any stone, clay, brick earth, gravel, sand, or minls from the demised premes, except materials for makg or repairg new or existg roads on the sd premes, & will not commit wilful or voluntary waste, spoil, or destron, in or upon the sd premes, or any pt thof, but will use & manage the same in a good & husband-like mner.

To preserve boundaries and prevent new roads or encroachments.

XX. AND ALSO will preserve all bounds, hedges, & fences, & will not suffer any new roads or footpaths to be made, & will prevent the enclosure of or encroachmt upon any waste lands on the boundaries or frontage of the sd demised premes.

To keep a field book.

XXI. AND ALSO will keep a field book, showg how every field or pcel of the demised premes has been cropped & cultivated in every yr of the sd term, & permit the lessor

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(*b*) In a hunting country omit "wire."

(*c*) Omit the word "hedges," except in cases where the hedges may contain underwood.

(*d*) As to waste and "ameliorating waste," see *Meux* v. *Cobley*, [1892] 2 Ch. 253.

or his agent, from time to time to inspect the sd book, & to take copies thof or extracts thrfrom.

To allow lessor to inspect, and to repair on notice.

XXII. And also will permit the lessor, or his agent, at all seasonable times, to enter into & upon the sd demised premes, & to examine the state of repair & cultivon & condon thof, [& to take any map or plan of the sd premes], & in case the farmhouse, farmbldgs, gates, &c., *follg the words in the covt to repair*, on the sd premes or any pt thof, shl be found defective or out of repair, [or in case the sd land or any pt thof shl not be found in a good & pper state of cultivon & condon], & notice in writg of any such defects or mres shl be given to the lessee, or left on the demised premes, the lessee will [if & so far as the case will admit] make good the same in a pper mner within the space of three calr months (*a*) next after every such notice shl have been so given or left as afsd, to the satisfon of the lessor or his agent.

To protect game.

XXIII. And also will not, witht the consent in writg of the lessor, or his agent, use upon the demised premes any gun, weapon, net, or other instrumt for the destron of game [woodcocks, snipes, quails, landrails,] (*b*) wildfowl, rabbits, or fish (save as provd by the Ground Game Act, 1880), but will protect & preserve the same, & the nests & eggs of all such birds as afsd, & at the reqt of the lessor, or his agent, will give notice to any pson to be named by him not to come upon [& will warn off all psons trespassg upon] the demised premes for the ppose of killg, takg, searchg for, or follg the same, & will also allow his name to be used in any informon, action, or prosecon for such trespass, on being saved harmless agst all costs & damages by reason thof.

The same. Another form.

XXIV. And also will use his best endeavours to assist in the preservon of the feathered game by protectg the nests, & by preventg disturbce of the birds by dogs durg the nestg season.

(*a*) *Qu.* shorten the notice, having regard to the further notice made necessary before re-entry by s. 14 of the Conv. Act, 1881.

(*b*) See p. 835, note (*d*).

Not to assign or underlet.

XXV. AND ALSO will not witht the consent in writg of the lessor, or his agent, assn, underlet, or pt with the posson of, the demised premes or any pt thof (*c*).

To furnish particulars of improvements (*d*).

XXVI. AND SHL previously to the —— day of —— in every yr of the sd term deliver to the lessor, or his agent, a correct statemt in writg of any improvemt within Pt. 3, of the 1st schdle to the Agricultural Holdings (England) Act, 1883, wch shl have been exted upon the demised premes durg the precedg yr with full parlars of the cost thof, & of each item of expenditure in respt thof with the dates of pchase of any materials pchased for that ppose, & the names of each pson from whom the same shl have been pchased, & shl on reqt, produce to the lessor, or his agent, all vouchers & rects for the sums expended.

As to mode of cultivation at end of term (*e*).

XXVII. AND ALSO will not sow or plant durg the last three yrs of the sd term any pt of the demised premes with two crops in succession of any of the descripons commonly called white or exhaustg crops, includg thrin wheat, oats, barley, & rye, witht a fallow or green crop pperly hoed & cleaned interveng betn such two white crops, every such green crop to be consumed on the demised premes, & will not durg the sd three yrs plant more than one crop of potatoes in any one field: AND FURTHER will at the commencemt of each of the last two yrs of the sd term sow such pt of the land as shl have been cultivated for green crops or fallow, & pperly manured in the precedg season, not being less than one-sixth pt at the least of the arable land hby demised, with a sufft quantity of good clover or other grass seeds, & pperly harrow in the same: PROVD THAT on this covt being duly pformed, the lessor shl pay for such clover & grass seeds

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(*c*) Add if appropriate, "except by sub-letting the cottages to weekly tenants," and "nor take in any horses, cattle, or sheep to graze on the premes."

(*d*) As to what are improvements, see *Meux* v. *Cobley*, [1892] 2 Ch. 253.

(*e*) This form is adapted to the case of the tenant not being bound to adopt any special mode of cultivation during the greater part of the term. See also Prec. II., p. 855; Prec. IV., pp. 863, 865.

as shl be sown in the last yr of the sd term, & on wch no cattle, sheep, or other live stk shl have been depastured, the amt so to be pd to be settled in case of dispute by arbitron (*a*) : And further that the lessee will leave in the last yr of the sd term (subjt as hinafter is mentd), pperly fallowed & sown with turnips or other root crop or green crop pperly hoed & managed, the one-fourth pt of the arable lands hby demised wch shl in such last yr be in course of succession to be cultivated for root crops, green crops, or fallows, on being pd for the labour & seed pperly bestowed on the sd land, the amt so to be pd to be settled in case of dispute by arbitron : Provd that the lessor or the incomg tenant may, if he think fit, enter & make the fallows, & the lessee will in such case permit him, with his servants, carts, horses, ploughs, & other implemts, to enter upon such lands so to be left to be fallowed as afsd, at any time or times after the commencemt of the last yr of the sd term, for the ppose of breakg up, ploughg, fallowg, manurg, sowg, & orwise preparg the same in the usual course of agriculture : And further will leave at the expiron of the sd term one-sixth pt of the arable land in clover ley of one yr's continuce only, & permit the incomg tenant, if he shl so desire, at any time or times after the 24th day of August next precedg the expiron of the sd term, to enter upon, break up, plough, fallow, dung, manure, sow, & orwise prepare & manage the lands so to be left in clover ley as he shl think fit.

The same. Another form.

xxviii. And also will in the last yr of the sd term leave all clover, seeds, hay, straw, dung, muck, & manure wch shl be produced on the premes in such yr for the use of the lessor, but will not do any labour or carriage thto witht a diron in writg from him or his agent : And will in the same yr leave one-fourth pt of the arable land eql in goodness to the genl average of the whole arable land

(*a*) The provisions for compensation in the Agricultural Holdings Act, 1883, do not apply to this.

in a summer fallow or other pper preparon for a wheat crop, one other fourth pt thof in a barley or oat stubble, one other fourth pt thof in a wheat stubble, & the remaing fourth pt thof in a seed ley: AND WILL plough & prepare for the sd wheat crop in a pper mner under the diron of the lessee or his agent, in default whof it shl be lful for the lessor, or the incomg tenant, to enter on the demised premes with servants, horses, carts, ploughs, & other necy implemts, & to do such ploughg & preparon: AND ALSO in such last yr will, if desired by the lessor, or his agent, but not orwise sow, roll, & harrow in seeds with any corn wch shl be sown on the sd premes, & not suffer such seeds to be depastured.

XXIX. AND ALSO will at the expiron or sooner determinon of this demise deliver up the demised premes & all addons thto [except such fixtures & bldgs (*b*) as the lessee shl be entled to remove under or by virtue of any Act of Parliamt, & wch the lessor shl not have elected to pchase] in such good & complete repair, & in such state & condon as the same ought to be in, having regard to the covts hinbfe contd. To deliver up.

LESSOR'S COVENANTS.

I. THAT HE, the lessor, will at all times durg the continee of the sd term repair & keep in repair the exterior, & when necy paint the external wood & iron-work of the farmhouse. To keep the exterior of the farmhouse in repair.

II. AND ALSO that if the farmhouse, bldgs, & barns, for the time being standg on the demised premes, or any of them, or any pt thof resply, shl at any time durg the sd term be destroyed or damaged by fire, the lessor will within To rebuild buildings burnt down.

(*b*) See 14 & 15 Vict. c. 25, s. 3; and the Agricultural Holdings Act, 1883, ss. 34 and 60; as this case is not affected by s. 55 of the last-mentioned Act, there appears to be nothing to prevent s. 34 being excluded if desired.

—— calr months thrafter, at his own cost sufftly rebld, restore, & repair the same.

To provide materials for repairs.

III. And also will at all times durg the sd term, when required & on receivg reasble notice, provide within —— miles of the farmhouse rough timber [bricks, slates, tiles, lime, nails, & iron, except iron gates & hurdles] for repairs required on the sd demised premes.

To allow lessee to get chalk.

IV. And also will at all times durg the sd term allow the lessee, at his own expse, to get & carry away so much [stone or gravel from any quarry & so much] chalk from any pit on the premes as may be required for use thron.

To allow lessee to destroy rabbits (*a*).

V. And also will allow the lessee to destroy & take rabbits on the demised premes & in the hedges or banks adjoing the same & belonging to the lessor, at any time durg the yr by ferretg with nets, witht dog or gun, [& by the use of dogs & guns from the first day of February to the first day of April in each yr, & by means of spring traps set in the rabbit holes & not above ground betn the thirtieth day of September & the first day of April, provd that the lessee shl communicate in writg to the lessor, the names of the psons to be employed for trapping.] Provd also that the ferretg [or shootg] pty shl never exceed —— in number, & that if any holes are made they shl be pperly filled in & levelled after ferretg, & that if hedges or banks shl be damaged they shl be at once repaired by the lessee, at his own expse.

To pay compensation for mischief done by ground game.

VI. And also will pay the lessee for all injury or damage done to wheat, oats, or root crops, by hares or rabbits, provd that within —— days of any damage being done in respt of wch compenson shl be claimed, the lessee shl give notice thof in writg to the lessor, or his agent. The amt of such compenson shl, if disputed, be settled by arbitron, & shl become payable on the next —— day of —— or —— day

(*a*) The rights given by this clause to the lessee, which of course are in addition to those given by the Ground Game Act, 1880, are more beneficial to him than those given by the Act.

of —— that shl occur after the same shl have been determined.

VII. AND ALSO will on the expiron of the tenancy (subjt to

Compensation at end of lease for unexhausted improvements (*b*).

(*b*) The right of a tenant to compensation for unexhausted improvements, is now regulated by the Agricultural Holdings (England) Act, 1883, 46 & 47 Vict. c. 61, which repealed the previous Acts of 1875 and 1876; and as to land under mortgage, see the Tenant's Compensation Act, 1890, 53 & 54 Vict. c. 57. By the first-named Act improvements executed by a tenant (for which a general right to compensation is conferred by s. 1), are divided into three classes: (i.) Those in the first part of the 1st schedule, for which is required the consent of the landlord, which may be given "upon such terms as to compensation or otherwise as may be agreed upon" (s. 3). In this case it may be convenient to embody the general terms of compensation in the lease, though this cannot affect the landlord's right to impose any other terms as a condition of his consent. (ii.) Those in the second part of the 1st schedule, which includes drainage only, as to which previous notice must be given to the landlord, on which the terms "as to compensation or otherwise" may be agreed upon, or the landlord may execute the work himself; failing either of which the tenant will be entitled to compensation under the Act (s 4). The section expressly provides that the notice may be dispensed with and the agreement as to compensation embodied in the lease. (iii.) Those in the third part of the 1st schedule, as to which the consent of the landlord is not required, but by s. 5, if there is any "particular agreement in writing" securing to the tenant "fair and reasonable compensation," compensation will be payable under the agreement and not under the Act; in this case too it seems that the terms of compensation can be determined by the lease, so long as they are "particular," *i.e.*, semble, fixed in reference to each particular class of improvements, and also "fair and reasonable." Sect. 7 obliges the tenant to give notice of his claim two months before the determination of his tenancy (see *Schofield* v. *Hincks*, 37 W. R. 157; 60 L. T. 573; *Re Paul*, 24 Q. B. D. 247), and provides for a counter-notice of any cross-claim by the landlord. By s. 55, any contract, &c., made by a tenant "by virtue of which he is deprived of his right to compensation under the Act," is rendered void "so far as it deprives him of such right." This is subject to the right of fixing the terms of compensation under ss. 3, 4, and 5, and does not prevent the exclusion of any provisions of the Act other than those giving a right to compensation. A covenant by the tenant to execute the improvements would not of course affect his right to compensation. By s. 59 the tenant is not entitled to compensation for any improvements (except "manures") begun within one year of the determination of his tenancy; and s. 6 provides for a set-off against the claim of the tenant of (inter alia) any benefit allowed by the landlord in consideration of the tenant executing the improvements, or any claim of the landlord in respect of breaches of covenant committed by the tenant.

Right to compensation under Agricultural Holdings Act, 1883.

Notice of claim.

Exclusion of compensation.

Improvements begun in last year of tenancy.

Set-off.

the provons hinafter contd) pay or allow to the lessee compenson, the amnt thof to be determined in case of dispute by arbitron (*a*), for the benefit derived by the lessor, from—

Application of Act.

As to what holdings are within the Act, see ss. 34 and 61. As to whether it applies to a tenancy for a year certain, see 36 Sol. J. 358, 365.

Methods of excluding the Act.

It may be desirable in some cases, as far as possible and having regard to s. 55, to exclude the operation of the Act as to compensation. Among the methods that have been suggested with this object are a reservation of penal rents for improvements executed without the landlord's consent, and a covenant by the tenant not to execute any improvements without consent (see 28 Sol. J., pp. 146, 162, 195, 211); but both of these provisions are of doubtful validity. Other methods which have been suggested and appear to be better are either, (a) to reserve during the last two or three years of the term a higher rent, reducible to the normal rent on the execution in each year by the tenant of improvements within the third part of the 1st schedule to the Act of a certain value; in which case under s. 6 (*a*) the amount taken off the rent would be deductible from the amount payable for compensation; or (b) to make the compensation agreed upon by the lease (which is often more favourable to the tenant than the compulsory compensation provided by the Act) conditional upon the tenant making no claim under the Act. On behalf of the tenant it should be noticed that s. 59 is more unfavourable to him than the provisions of an ordinary lease.

As to the landlord obtaining a charge for the amount paid by him for compensation, see ss. 29, 30. That the right to obtain a charge on the holding extends to the executors of a landlord tenant for life, see *Gough* v. *Gough*, [1891] 2 Q. B. 665. For the provisions of the Act as to fixtures, &c., see s. 34, and as to notice to quit, see p. 853, note.

As to holdings under two acres, this Act is now in the main superseded by the Allotments and Cottage Gardens Compensation for Crops Act, 1887, 50 & 51 Vict. c. 26; and as to allotments (not exceeding one acre), see the Allotments Act, 1887, 50 & 51 Vict. c. 48, s. 8.

By the Tenant's Compensation Act, 1890, 53 & 54 Vict. c. 57, s. 2 (sub-s. 1), a tenant from a mortgagor under an agreement *not* binding on the mortgagee is entitled to compensation for improvements as against a mortgagee in possession; but the amount may be set off against any rent due; and by sub-s. 2 the mortgagee must give the tenant six months' notice in writing before depriving him of possession, and must then allow him compensation for improvements, where the agreement was for a tenancy from year to year or for a term of years not exceeding 21, at a rack rent. S. 3 provides for the registration of charges on compensation for improvements made under s. 31 of the Agricultural Holdings Act, 1883.

(*a*) As to arbitration, see the Agricultural Holdings Act, 1883, ss. 9 *et seq.*, and as to the case where compensation is fixed by the lease, see s. 17. As to arbitration generally, see the Arbitration Act, 1889, and see

First, Permanent improvemts made by the lessee, with the consent in writg of the lessor or his agent, on the demised premes; Secondly, For the bones or other artificial manure wch shl durg the last two yrs of the tenancy be with the like consent brought & spread on the demised premes: Thirdly, For the oil-cake or other food brought & consumed durg the last two yrs of the tenancy on the demised premes; so that the amt of such bones, artificial manure, oil-cake, or other food so brought & consumed or spread, in eir of the sd two yrs, does not exceed the average annl quantity brought & consumed, or spread, durg the three yrs immedly precedg the two last yrs of the tenancy; & so that the amt of such compenson shl not exceed one-third pt of the value of the bones, artificial manure, oil-cake, or other food brought & consumed, or spread, durg the last yr of the tenancy, togr with one-sixth pt of the value of the bones, artificial manure, oil-cake, or other food brought & consumed, or spread, durg the last yr but one of the tenancy [in excess of the value of the food & manure wch the lessee may be bound to bring & consume, or spread, as an equivalent for food carried away]. *See also, Prec. II.*, pp. 856, 857; *Prec. III., clause* 33, p. 862; *Prec. IV.*, pp. 865, 866.

For quiet enjoyment.

viii. And also that the lessee, paying the sd yrly rent of £——, & the sd addl rents in case the same shl be incurred, & pforing all the covts & agrmts on the pt of the lessee hrin contd, may quietly hold the demised premes durg the sd term (*b*) witht any interruption by the lessor or any pson claimg under him.

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the form of clause, *infra*, p. 852. As to the distinction between an arbitration and a mere valuation, see *Re Dawdy*, 15 Q. B. D. 426.

(*b*) Add here, if appropriate, "& the barns & stack-yards until the —— day of —— next after the expiron of the sd term for the stackg, threshg, & dressg the last yr's crop."

PROVISOES.

Proviso as to sales under a distress of things covenanted to be consumed on the premises.

I. Provd always, & these psnts are upon this condon, that in case the lessor shl distrain for rent (*a*), it shl be lful for him to sell & dispose of the distress or distresses, or any pt or pts thof, subjt to a condon that all hay, straw, fodder, haulm, turnips, mangold, compost, & manure, *the words shd comprise all the produce of the farm corted to be consumed on the premes*, shl be consumed on the premes, & that on a sale being made, subjt to such condons, the lessees shl allow the use of the out-bldgs, barns, yards & fields to the pchaser, free from chge, for the ppose of threshg out or consumg the same.

Power to lessor to resume possession of part of land.

II. Provd always, &c., that it shl be lful for the lessor at any time or times to resume posson of & determine the tenancy of the lessee as to any portion or portions [not exceedg in the whole —— acres] of the sd demised premes for the ppose of sellg or using or lettg the same for pposes other than agricultural or as allotmts [or for any of the pposes mentd in the 41st section of the Agricultural Holdings (England) Act, 1883] on giving to the lessee one calr month's notice of his intention in that behalf, in wch case the lessor shl allow to the lessee a proportionate abatemt (to be fixed in case of dispute by arbitron) of the rent hby reserved in respt of the land posson of wch shl be so resumed, *or*, "shl make compenson for the same by an abatemt of rent or orwise in mner provd by the sd 41st section" & the lessee shl be entled to no other compenson whatsr [& the covts & provons hrin contd shl be applicable to the land as to wch the tenancy shl be so determined in the same mner as far as may be as if the demise thof had expired by effluxion of time]. [Provd always, &c., that in case the powers given by the last precedg provo shl be exer-

(*a*) See 56 Geo. III., c. 50, s. 11; *Ridgway* v. *Lord Strafford*, 6 Ex. 404; *Hawkins* v. *Walrond*, 1 C. P. D. 280; *Lybbe* v. *Hart*, 29 Ch. D. 8. As to the law of distress, see p. 835, note.

cised by the lessor the lessee shl be at liberty to put an end to this psnt demise on giving to the lessor six calr months' notice in writg in that behalf, such notice to be given within —— days after the rect of the notice mentd in the precedg provo.]

III. PROVD, &c., that the notice required to be given by the lessee under s. 4 of the Agricultural Holdings (England) Act, 1883, as to improvemts within Pt. 2, of Schdle I., thto shl be dispensed with, & that if & when the lessee shl be entld under the sd Act to rece compenson from the lessor in respt of any improvemts exted by the lessee upon the demised premes, such compenson shl be determined accdg to the rules & allowces contd in the schdle hto, & be payable on the expiron of the tenancy or as soon thrafter as the same shl be ascertained.

Proviso fixing the terms of compensation under the Agricultural Holdings Act, 1883 (b).

IV. PROVD ALWAYS, & it is hby agrd & decld that the compenson hinbfe agrd to be pd by the lessor to the lessee in respt of improvemts or any other mres at the end of the tenancy is intd to & shl be in substiton for any compenson wch the lessee shl be entld to rece or claim under the Agricultural Holdings (England) Act, 1883, or any other statute in respt of any improvemts exted by him upon the demised premes, & that if the lessee shl make any claim agst the lessor for any such compenson under the sd Act or any other statute the provon hinbfe contd for the paymt to the lessee of compenson at the end of the tenancy whether in respt of any improvemts provd for by the sd Act or any other statute or any other improvemts or mres shl wholly cease & be void.

Proviso that agreed compensation is to be substituted for statutory compensation (c).

V. PROVD ALWAYS, & it is hby agrd that any powers or remedies hby expressedly given to the lessor, in the event of

Proviso that remedies given

(b) See p. 847, note. This form to be used if it is desired to abide by the Act instead of introducing independent provisions and excluding it altogether. The schedule should specify the particular kinds of improvements mentioned in the Act; the compensation for improvements within Part 3 of Schedule I. to the Act must be "fair and reasonable."

(c) See p. 847, note.

to lessor are cumulative.

any breach by the lessee of any of the covts hinbfe contd, shl be in addon to, & not in substiton for the rts & remedies by law given to the lessor, in respt of or consequent upon any such breach, whether by pcdgs to recover posson of the demised premes, or to recover damages or orwise, all wch rts & remedies may be enforced or pursued in due course of law accdly: [PROVD ALWAYS that the clause lastly hinbfe contd shl not qualify or affect the arbitron clause hinafter contd].

Arbitration clause.

VI. ANY DISPUTE or question wch may arise betn the pties resptg their rts or liabilities under these psnts or in relon to the contract of tenancy hby made shl be refd to the arbitron of a single referee if the pties so agree or orwise of two referees or an umpire, & such arbitron shl be regulated by the provons in that behalf contd in the Agricultural Holdings (England) Act, 1883, if & so far as the case may admit, & orwise by the Arbitron Act, 1889 (*a*).

PRECEDENTS.

I.

PREC. I.

AGREEMENT *for a* YEARLY TENANCY. *Short Form.*

Parties.

AGRMT made this —— day of —— BETN A., of, &c., (hinafter called the landlord, wch expression shl include, &c., *see* p. 734), of the one pt, & B., of, &c. (hinafter called the tenant, wch expression shl include, &c.), of the other pt.

Agreement to let.

1. THE LANDLORD agrees to let, & the tenant agrees to take THE MESSE, farm, & lands, called —— Farm, situate

Parcels.

in the parish of ——, in the coy of ——, the parlars whof are specified in the schdle hto, *reference if need be to plan*, as now occupied by ——, with the appurts. *Reservon of timber*

(*a*) See the Acts referred to; and above, p. 771, note.

& minls, & sportg, if intd, pp. 833, 834. THE TENANCY to be from the —— day of ——, from yr to yr, until it is determined at the end of the first, or any subseqt yr, by eir pty giving to the other six calr months' notice (*b*) in writg. PREC. I. From year to year.

AT THE yrly rent of £——, payable half-yrly [qtrly] on, &c., the first paymt to be made on the —— day of —— next [& the last paymt to be made in advce one calr month bfe the expiron of the tenancy]. Rent.

AND THE TENANT HBY AGREES Tenant's agreements.

2. To PAY the rent at the time, & in mner afsd.

3. To PAY all rates & taxes, except [land tax, tithe rentchge, &] landlords' ppty tax. To pay rent and taxes.

4. To KEEP the farmhouse & bldgs, & all hedges, fences, & gates, & leave the same at the end of the tenancy in good tenantable repair, he being allowed rough timber for repairs within a distce of —— miles from the farmhouse. Repair.

5. To CONSUME all the hay, straw, & root-crops upon the farm. Consume produce on farm.

6. To SPREAD the whole of the manure & muck yrly upon the land. Spread manure.

7. To PRESERVE all timber, timber-like trees, & tellers. Preserve timber.

8. To LEAVE one-third of the arable land in fallow [tare or pea-grattan] in a clean state for wheat at the end of the tenancy for the incomg tenant. Leave fallow.

9. NOT TO grow two successive white crops on the same pce of land. As to white crops.

10. NOT TO mow any pasture in two successive yrs. Pasture.

11. NOT TO break up pasture, witht the consent in writg of the landlord or his agent, under a penalty of £50 per Not to break up pasture.

(*b*) See the Agricultural Holdings (England) Act, 1883, s. 33; *Barlow* v. *Teal*, 15 Q. B. D. 501. Under 14 & 15 Vict. c. 25, s. 1, an agricultural lease by a tenant for life, though invalid against those entitled in remainder, is good for one year after the lessor's death. See further as to leases by limited owners, *ante*, p. 772. As to the necessary notice by a mortgagee to a tenant under a yearly tenancy or a lease by the mortgagor, not binding on the mortgagee, and compensation for improvements in such a case, see p. 848, note. As to agricultural leases.

PREC. I.

acre, & in like proportion for any less quantity than an acre, such penalty to be recoverable immedly.

Timber. 12. NOT TO cut or lop any timber or timber-like trees.

Manure. 13. AFTER he has given or reced notice to quit, not to cart any manure or muck on to the land, witht giving to the landlord or his agent, six days' notice in writg of his intention to do so.

Game. 14. NOT TO destroy any game or rabbits except as authorized by the Ground Game Act, 1880.

Not to assign. 15. NOT TO assn or under-let the premes or any pt thof witht the written consent of the landlord, or his agent.

Landlord to have right of entry. 16. THAT THE landlord shl have ingress & egress, for himself & all psons authorised by him, to the land & bldgs, to inspect the state of repair & condon of the premes, & to cut timber & for sportg & preservg game.

Landlord's agreements. AND THE LANDLORD HBY AGREES

To repair. 17. TO PUT the farmhouse & bldgs in good tenantable repair at the commencemt of the tenancy.

Find timber. 18. TO FIND rough timber for repairs within ----- miles from the farmhouse.

Pay compensation (*a*). 19. TO PAY the tenant on quittg for all pchased artificial manure, one crop off, & other tenant rts, includg draing, accdg to the custom of the country, as from an incomg to an outgoing tenant, but the rt to compenson under this clause is condonal on the tenant not making any claim for compenson under the Agricultural Holdings (England) Act, 1883.

IT IS HBY ALSO AGRD

Proviso for re-entry. 20. THAT THE landlord shl have a rt of re-entry on non-paymt of the rent for twenty-one days, whether legally demanded or not, or breach of any of the tenant's agrmts. IN WITS, &c.

[*Schdle of Parcels.*]

(*a*) See p. 847, note.

II.

AGREEMENT *for a* YEARLY TENANCY *in* LEICESTERSHIRE. LADYDAY *holding*. FULL FORM. PREC. II.

AGRMT, &c., *as in Precedent I., to end of the reservon of sporting.*

THE TENANCY shl be from the 25th day of March next, from yr to yr, determinable at the end of the first, or any subseqt yr, on six calr months' notice (*b*) in writg to quit given by eir landlord or tenant to the other, AT THE yrly rent of £ ——, payable qtrly, on the 24th day of June, &c., in every yr, the first paymt thof to be made on the 24th day of June next, & after notice to quit has been given by eir pty, the last qtr's rent shl be due & payable in advce one calr month bfe the end of the tenancy [AND AT the further rents, *penal & addonal rents*, pp. 743, 835]. Tenancy to be from year to year. Rent.

THE TENANT AGREES Tenant's agreements.

To pay rent, p. 744; *taxes*, p. 744; *to reside*, p. 838; *to repair*, p. 837; *to cultivate land accdg to custom*, p. 838; *not to mow grass land*, p. 839; *form* XI., *et seq.*; *to consume hay, &c., on premes*, p. 839; *to preserve trees*, p. 840; *to preserve hedges*, p. 840; *to allow lessor to inspect*, p. 842; *to protect game*, p. 842; *not to assn*, p. 843; AND ALSO will, in the autumn bfe the tenancy ends, sow wheat at the pper time on all the land, wch in due course ought to be sown with wheat; but if, at any time after the 31st day of October in the last yr of the tenancy, he shl have failed so to do, or if the landlord or incomg tenant shl at any time be dissatisfied with the mner in wch, or the time at wch, the work is being done, he will, on being required so to do by the landlord or the incomg tenant, immedly deliver to eir of them posson of, & permit him to enter upon, all the land required by the landlord or incomg tenant for the ppose Sow wheat in last year.

(*b*) See p. 853, note.

PREC. II.

of being sown with wheat: AND ALSO will, on the 6th day of January bfe the end of the tenancy, deliver to the landlord or incomg tenant, posson of, & permit him to enter & remain upon all the lands to be fallowed, or to be sown with pulse & spring corn, accdg to the pper cultivon of the farm, except such lands as are then growg turnips: AND ALSO will, on the sd 6th day of January, provide in & upon the farm for the use of the landlord or incomg tenant, from that day until the 25th day of March follg, suffit stabling-room & straw for beddg, with a pper quantity of hay or seeds for the workg horses employed upon the lands given up, the value of such hay & seeds, and the herbage of the land entered upon, to be pd for by the landlord or incomg tenant at feedg prices on a valuon to be made in the usual mner (*a*): AND ALSO will, on the 14th day of February bfe the end of the tenancy, deliver to the landlord or incomg tenant posson of & permit him to enter upon one half of the turnip-land above excepted: or, if the pper proportionate quantity of land shl in breach of this agrmt not be in turnips in the last yr, then so much as wd be eql to one-half of the land that ought to have been in turnips, & will deliver posson of the remr as soon as the turnips are eaten off, but the tenant shl not have any claim for eatage in respt of any of the turnip-land delivered up bfe the end of the tenancy: AND LASTLY will permit the landlord & incomg tenant & their agents to do all things necy for carryg these regulons, on the determinon of the tenancy, fully into effect.

Give up fallows in January;

And provide stabling for incoming tenant.

Give up half the turnip land in February.

Permit landlord to carry agreement into effect.

Landlord's agreements.

THE LANDLORD AGREES

To pay compensation at end of tenancy.

THAT he will, on the expiron of the tenancy (subjt to the provons hinafter contd), pay or allow to the tenant compenson (the amt thof to be determined in case of dispute by arbitron (*b*)), at the end of the tenancy, for unexhausted improvemts & labour accdg to the rules follg, that is to say:—

(*a*) This is not affected by the Agricultural Holdings Act, 1883.

(*b*) This is worded so as to exclude the application of *Re Dawdy*, 15 Q. B. D. 426.

PREC. II.

First. For the cost of seed (provd always that it is good & clean), & of the labour of once ploughg, & of scarifyg, harrowing, & sowing the land then sown with wheat in due course, & of the labour pperly bestowed on clay-land summer fallowed in due course, wch is unfit for turnips, cole, or other fallow crop (provd such land has been worked in a good & husbandlike mner, but not orwise), & of the seed & labour of sowing such clay-land fallow, & also the cost price of the labour of sowing all grass & clover seeds sown with the first crop of corn after fallow turnips, or other fallow crop, in the spring precedg the end of the tenancy, provd that the tenant shl not stk the land sown with grass or clover seeds after the —— day of —— precedg the end of the tenancy. For seed and labour.

Second. For bones pperly & benefly used in the yr precedg the end of the tenancy for turnips or other green crops, the whole of the cost if used dry, & three-fourths if dissolved in acid, to be allowed exclusive of carriage. Bone manure.

Third. For guano or other well-known & approved artificial manure pperly & benefly used in the yr precedg the end of the tenancy for turnips or other green crops consumed by sheep on the ground where grown, two-thirds of the cost price to be allowed exclusive of carriage; but when the crop has been drawn & consumed in the yards by cattle, one-half of the cost price to be allowed exclusive of carriage. Artificial manure.

Fourth. For oil-cake given to cattle & sheep, one-third of the cost price of that so used within twelve calr months bfe the end of the tenancy, & one-sixth pt of the cost price of that so used in the previous yr, to be allowed exclusive of carriage. Oil-cake.

Fifth. For lime pperly & benefly used within twelve months bfe the end of the tenancy, if no crop has been taken from the land limed in that yr, the whole cost, includg labour, to be allowed: if one crop has been taken from such land, four-fifths of such cost to be allowed, & so on, diminishg the allowce by one-fifth for each crop taken from such land. Lime.

PREC. II.

Claying, &c.

Sixth. For claying, marling, or chalking, a similar allowce to that for liming.

Drainage.

Seventh. For all draing done by him durg the last five yrs of the tenancy, provd it is well & pply exted, accdg to the rates follg, that is to say:—the whole cost of draing done within twelve calr months bfe the end of the tenancy; four-fifths of the cost of draing done in the previous yr; & so on, diminishg the allowce by one-fifth for each yr that shl have elapsed since the drainage was done.

Valuers to estimate sums owing to landlord for breaches of agreement, and deduct from sums to be allowed to tenant (*a*).

And it is hby agrd that the valuers or valuer shl make an estimate of all sums due from the tenant to the landlord for arrears of rent, or for dilapidons or injury to the farm by bad husbandry, or breach of agrmt or orwise in any respt, & of the cost of puttg into repair & into good tenantable condon all the bldgs, gates, fences, drains, water-courses, & other things on the farm, to the repair or maintence of wch the tenant is liable, & then being out of repair or not in good tenantable condon, & the amt of such estimate shl be deducted from any sums to be due to the tenant at the end of the tenancy, or, at the option of the landlord, shl be pd to him by the tenant on demand. *Provo excludg statutory rt to compenson*, p. 851. *Provo for re-entry*, p. 764, "but notwg any such re-entry, the tenant shl be entled to all outgoing allowces as bfe mentd, subjt to a dedon for rent in arrear, dilapidons, & orwise as afsd." *Quiet enjoymt*, p. 849. *Arbitron*, p. 852. In wits, &c.

III.

PREC. III.

AGREEMENT *for a* Yearly Tenancy *in* Kent *from* 11*th* October. *Full Form* (*b*).

AGRMT made this —— day of —— Betn, &c., *as in Precedent I.*

(*a*) Compare the Agricultural Holdings Act, 1883, s. 6.

(*b*) See notes to preceding Precedents and Clauses.

PREC. III.

1. THE LANDLORD agrees to let, & the tenant agrees to take, ALL THAT farm, called —— Farm, situate in the parish of ——, consistg of —— acres or thrabouts, togr with the farmhouse & bldgs belonging thto, TO HOLD the same from the 11th day of October, 18—, from yr to yr, until eir pty shl have given six calr months' notice in writg of his intention to determine the tenancy, in any case the tenancy to cease on the 11th day of October, 18—, AT THE yrly rent of £——, payable on the 6th day of April & the 11th day of October, unless, as regards the last half-yrly paymt, demanded at any time within one month previous to the expiron of the tenancy, in wch case it shl become due immedly on such demand.

Agreement to let. Parcels. From year to year. Rent.

THE LANDLORD RESERVES

Landlord reserves.

2. ALL THE pollard trees, tellers (whether on stems or orwise), timber, & timber-like trees, with liberty of ingress to plant, top, fell, & carry away the same.

Timber.

3. ALL GRAVEL, brick, earth, quarries, & minls, with liberty to work, use, & carry away the same.

Minerals.

4. THE RT to take & resume land for public bldgs & public works, payg the tenant compenson [in the mner provd by the 41st section of the Agricultural Holdings (England) Act, 1883].

Right to resume land.

5. THE EXCLUSIVE rt of sportg, subjt to the rts of the tenant under the Ground Game Act, 1880.

Right of sporting.

6. THE FREE rt at all times of entry for inspon & other reasble pposes.

Right of entry.

THE TENANT agrees

Tenant agrees

7. TO PAY rent & taxes.

To pay rent and taxes.

8. TO RESIDE on the premes.

To reside.

9. TO KEEP in good repair the farm-house, & all the bldgs, fences, gates, stiles [culverts, pounds], bridges & premes, the same havg been put by the landlord in tenantable repair at the commencemt of the tenancy; & the landlord, upon reasble notice findg & allowg on the premes, or within —— miles distce, all rough materials (except straw for thatchg & glass), to be fetched by, & at the cost of, the

To repair.

PREC. III.

tenant, all damages by tempest, above £20 at any one time, or by fire, excepted.

To keep roads metalled.

10. To KEEP the farm-roads well metalled, & in good repair.

To paint internally.

11. To PAINT, paper, & whitewash the farmhouse & bldgs internally every seven yrs.

To paint externally.

12. To TAR & paint the exterior of the farmhouse & bldgs & other premes usually tarred & painted, every four yrs.

To repair on notice.

13. To REPAIR on [three] months' notice.

To bear proportion of cost of sawn timber.

14. To PAY one-fourth of the cost of all converted or sawn timber used in repairs, if found by the landlord, instead of rough timber.

To fallow one-seventh of land.

15. To MAKE annlly one-seventh pt of the arable land a good summer fallow, to be ploughed not less than —— times, with suitable dressgs, & to keep the lands at all times in a clean state, & cultivated accdg to the best course of husbandry.

Not to grow for seeds.

16. NOT to leave for seed any turnip, rape, mustard, rye-grass, mangold, flax, or other such seeds on the sd premes (except so much of such seeds as may be required annlly for seed by the sd farm), witht bringing on fifteen yards of good rotten dung per acre, or an equivalent in other manures.

To grow hops.

17. To KEEP up in good plant not less than —— acres of hops.

To stock farm.

18. To KEEP the farm sufftly stocked, & not to stall off any of the sheep depasturg thron.

Not to break up pasture.

19. NOT TO break up any pasture-land witht the written consent of the landlord or his agent, or to mow any pt thof in three successive yrs, under a penalty of £50 for every acre so broken up, & £10 for every acre so mown, & so in proportion for any less quantity than an acre, such penalties to be recoverable immedly as liquidated damages, & within six months after mowing, where the hay is not consumed on the farm, to manure one-third pt of the lands mown with not less than twenty-five yards of good rotten dung per acre, or other manure equivalent thto, & not to mow in any one yr more than —— acres of the pasture-land.

20. To CONSUME all the grass hay upon the farm, unless the landlord or his agent gives his written consent to the contrary. PREC. III. To consume hay.

21. NOT TO carry off from the farm any of the hay, straw, haulm, clover or roots, witht bringing on to the farm immedly in exchange four cubic yds of good dung for every load of hay, straw, haulm or clover so carried off, & fifteen yards of good dung for every acre of roots carried off, or an equivalent in other manures, for such quantities resply, such manure & dung, togr with manure made on the farm, to be spread in a husbandlike mner on the land in every yr, or in the last yr of the tenancy, left made up in pper maxhills, the tenant being pd for his labour on the same accdg to the custom of the country. Not to carry off hay, &c., without bringing manure on.

22. To GIVE, if required, at every audit, an acct of the straw & hay sold off, & the manure brought on the land in the precedg yr. Account for hay, &c.

23. NOT TO prune, top, or lop any of the timber-trees injuriously, under a penalty of £10 for each tree: & not to cut down or destroy any of the timber or timber-like trees under a penalty of £20 for every tree, such penalties to be recoverable in the same way as the above-mentd penalties. Not to cut timber.

24. To PRESERVE all fruit-trees, & plant fresh ones in lieu of those dying, or becomg decayed. Preserve fruit-trees.

25. *To preserve boundaries & prevent encroachmts*, p. 841.

26. *To cleanse ditches*, p. 838.

27. *Not to assn or underlet*, p. 843.

28. To sow seeds in the last yr with the wheat or spring corn, & not to turn any stk or sheep into such seeds to feed them injuriously after harvest. Sow seeds.

29. To LEAVE, at the end of the tenancy, two-seventh pts of the arable land in a fit state, & pper tilth for a wheat season in eql proportions of clover ley, podware, mangold, & rape. Cultivation at end of tenancy.

30. To ALLOW the incomg tenant, after the harvest in the last yr of the tenancy, to enter the stubbles & plough the After harvest to allow

PREC. III.

same in case the outgoing tenant is unable or unwillg to pform the work required to be done by the new tenant.

incoming tenant to plough.

THE LANDLORD agrees

Landlord agrees

31. To FIND, within six weeks after notice, rough timber or other pper materials for repairs (except as afsd) within —— miles of the premes, & to bear half the expse of labour, nails, gate-irons, & staples in such repairs.

To find materials for repairs.

To rebuild in case of fire.

32. To REBUILD, in case of fire, the house & premes within six months upon such a scale as the landlord shl think suitable & pper for the farm.

To allow for hay, &c., left on farm.

For labour on fallows.

For purchased manures.

Seeds.

Labour on stubbles.

33. To ALLOW the tenant for all the hay, straw, haulm, chaff, & litter left on the farm at feedg price, & for the clover left on the farm, at sale price; To pay for all labour on the fallows & on the manures durg the last yr; To pay for pchased manures brought on durg the last yr, & from wch no benefit has been derived by the tenant, except any unreasonably & unnecessarily pchased & except any brought on under Clause 21 (*a*); To pay for seeds sown reasonably & seasonably by the tenant accdg to his agrmt; To pay for all labour pperly bestowed upon stubbles after harvest, unless the landlord shd have signified that he did not require any such labour bestowed, but the tenant to be in such case found all reasble work for his horses; To allow the tenant the use of the barns until the —— day of —— next after the end of the tenancy; To pay for hop-poles on not exceedg —— acres of land; To pay for the underwood down to the stub; To pay for tar & paint wch has been pperly used on the premes by the tenant; To pay the tenant one-fourth pt of the cost price of all linseed, rape, or cotton cake consumed by cattle or sheep durg the last yr of the tenancy, & also one-eighth pt of all corn fed by cattle, sheep, or swine, provd there has been no crop taken from the manure or the fields since the feedg.

Use of barns.

For hop poles.

For underwood.

For paint.

For oil-cake, &c.

34. *The above allowces to be in substiton for compenson provd by statute*, p. 851.

(*a*) Compare Agricultural Holdings Act, 1883, s. 6 (b).

35. For QUIET enjoymt by the tenant on paymt of rent & pformce of this agrmt witht interruption by the landlord or any one claimg under him. PREC. III. For quiet enjoyment.

36. THE LANDLORD shl have a rt of re-entry on non-paymt of rent within twenty-one days after the day for paymt, whether demanded or not, or on breach of any of the agrmts on the pt of the tenant [or on his becomg bkpt, or enterg into liquidon or compoundg with his creditors]. Proviso for re-entry.

37. *Arbitron*, p. 852. As WITS, &c.

IV.

AGREEMENT *for a* YEARLY TENANCY *in* WORCESTERSHIRE (*b*). PREC. IV.

PARTIES, as in Precedent I.

1. *Agrmt to let, &c., as in Precedent I., clause* 1.

THE TENANT hby agrees as follows :— Tenant agrees

2. *To pay rent*, p. 744.

3. *To pay rates & taxes*, p. 744.

4. AND ALSO will pay in like mner such further rent as shl, &c., "in underdraing the sd premes," p. 836, clause v.

5. *Add appropriate provons as in precedg forms, as to any mres not provd for in the follg clauses.*

6. ALL hay, straw, roots, cabbages, & other food for cattle grown upon the sd farm shl be consumed thron, or if sold, one half of the proceeds of such sale shl within six months after the sale be expended in manure approved by the landlord or his agent, to be applied eir to green crops, or to the pasture land, the other half in oil-cake or linseed to be given to cattle or sheep. All manures, whether made from the produce of the farm, or pchased in exchange for such produce sold, shl be used upon the sd farm, or in the To consume hay, &c.

(*b*) See notes to preceding Precedents and Clauses.

PREC. IV. last yr of the tenancy left for the benefit of the succeedg tenant. Notice shl be given by the tenant to the landlord or his agent previous to any such sale of hay, &c., *as above*, & vouchers shl be produced for the manure or oil-cake bought instead thof. If any hay, &c., *as above*, be destroyed or damaged by fire the value thof shl be expended in the pchase of other hay, &c., *as above*, or in manures & oil-cake in the same mner as if such hay, &c., *as above*, had been sold.

To farm properly. 7. THE LAND shl be kept in a clean & good state of cultivon & so cropped that at the expiron thof the arable land shl be in the condon hinafter mentd, or the tenant shl pay to, or be pd by, the landlord for any deviation thfrom such sum as shl be determined by arbitron, as hinafter mentd.

On termination one-half land to be ready for white straw crop. 8. ONE HALF of the arable land shl, on such expiron of the tenancy, be clean & in good condon & fit to plant with white straw crops. Of such half pt, one moiety shl have been fallowed (with or witht green crops) durg the previous summer; the other moiety thof shl have been wholly under clover or mixed grass seeds, or pt in clover & the rest beans or peas after being manured, none of the clover or other grasses having been allowed to stand for seed.

One-fourth land to be sown with clover. 9. ONE-FOURTH of the arable land shl have been sown in the spring of the yr precedg the terminon of the tenancy with clover or other pper mixed-grass seeds upon land fallowed the previous yr & clean; the seeds, sowg, & harrowg to be pd for by the landlord or his incomg tenant provd they have not been grazed after harvest.

Not more than one-fourth of land to require fallowing. 10. NOT MORE than one-fourth of the arable land shl require to be fallowed in the yr after the terminon of the tenancy, nor require an outlay of more than fifty shillings per acre to clean it. If it requires less than that sum the landlord or his incomg tenant shl pay the diffce, if more than that sum the tenant shl pay it.

11. *Arbitron clause*, p. 852.

Duties of referees. 12. THE REFEREE or referees or umpire shl first consider

how far the state of the farm differs if at all from that hrin stipulated, & shl decide whether the tenant or the landlord or his incomg tenant is entled to any & what compenson on acct of such varion. He or they shl then settle the other claims betn the pties upon the follg basis.

Sum to be paid according as half the land is or is not ready for white straw crops.

13. THE LANDLORD or his incomg tenant shl pay after the rate of fifty shillings per acre for all land in excess of one-half wch under the above condons is fit to be planted with white straw crops or shl be pd by the tenant at the same rate for all short of one-half of the arable land so fit.

As to cultivation of clover.

14. NOT LESS than one-fourth of the clover or mixed grass seeds shl be mown for hay durg the last yr for the use of & to be pd for by the incomg tenant. For the remr of the land whron clover or other grasses have been grazed the whole summer by sheep, the incomg tenant shl pay after the rate of forty shillings per acre, provd such land be clean, & that only one crop of corn has been taken since the previous fallow.

Tenant to be paid for fallows.

15. THE TENANT shl be entled to the sum of fifty shillings per acre for all clean fallows, whether after vetches eaten while green, or bare fallows. If not clean & ready to plant with corn, the cost of makg them so shl be deducted. For all root crops he shl be pd the value, not the cost of cultivon, provd the land be clean. If it be not so the cost of cleang it shl be deducted.

Tenant to be paid for roots not sold, and for purchased manures and oil-cake.

16. IF THE tenant has not sold hay, &c., *as above, clause* 6, & has pchased manures within the last two yrs of the tenancy, or if he has pchased manures in excess of the quantity required to replace the hay, &c., *as above*, so sold, he shl be pd one-half the cost of all such pchased manures in excess of the quantity so required wch shl have been applied to green crops or grass land in the last yr of the tenancy, & one-fourth of the cost of that in the last yr but one, such cost not havg exceeded forty shillings per acre. He shl be pd for all unprepared bones & lime used upon any arable land durg the last four yrs of the tenancy, deductg one-fourth for every yr's use; & on pasture land

PREC. IV.

durg the last six yrs, deductg one-sixth for every yr's use, provd that such pasture land has not been mown in that time; & for every other fertilizer of a permanent nature such allowce as the arbitrors may determine; & also one-half of the cost of all oil-cakes or linseed consumed durg the last yr, & one-fourth of that in the last yr but one, provd such oil-cake or linseed has been given to cattle & sheep, & does not exceed the average of the four yrs precedg the last yr of the tenancy.

Tenant to have use only of barns after termination.

17. THE TENANT shl not retain any pt of the bldgs or land after the terminon of his tenancy (except the use of the barns for threshg & winnowg only), but shl be pd the value of all hay, &c., *as above, clause* 6, remaing on the premes. The referee or referees or umpire shl fix the times for threshg & deliverg such straw to the incomg tenant.

Tenant to be paid for permanent improvements.

18. THE TENANT shl be pd such sum as the referee or referees or umpire may determine for all permanent improvemts made with the sanction in writg of the landlord or his agent.

Arbitration to apply on bankruptcy.

19. IN CASE the tenancy shl determine by bkptcy or arrangemt or compon with or for the benefit of credors the arbitron clause shl apply, & the referee or referees or umpire shl have full power to adjudicate on all questions of compenson, havg regard to the time when the tenancy so determined; & the tree for credors shl stand in the place of the tenant.

20. *Provon that compenson provd for shl be in lieu of statutory compenson*, p. 851.

21. *Proviso for re-entry*, p. 764. IN WITS, &c.

V.

LEASE *for a* TERM (*a*).

PREC. V.

THIS INDRE made the —— day of ——, BETN A., of, &c. (hinafter called the lessor, wch expression, &c., *see* p. 734), of the one pt, & B., of, &c., farmer (hinafter called the lessee, wch, &c.), of the other pt, WITNETH, that in conson of the rents & covts on the pt of the lessee hinafter reserved & contd, the lessor doth hby demise unto the lessee ALL THAT messe or farmhouse & all those pces of land situate in the parish of ——, in the coy of ——, known as —— Farm, as the same are now in the occupon of ——, & wch are more parlarly descd in the schdle hrunder written, *reference if need be to plan*, the nos. in wch schdle [& plan] correspond with the nos. in the ordnce map of the sd parish. *Reservon of timber*, p. 833; *minls*, p. 834; *sportg*, p. 834. To HOLD the premes UNTO the lessee from the —— day of ——, for the term of —— yrs, *Reservon of fixed rent*, p. 740; [*penal rents*, p. 835; *improvemt rents*, p. 836 (*b*)]; *the rents to be pd clear of dedons*, p. 836; *Covts by lessee to pay rent*, p. 744; *pay taxes*, p. 744; *to reside*, p. 838; [*to pay for draing*, p. 838]; *to repair*, p. 837; *not to alter the condon of the premes*, p. 838; *to insure & rebuild*, p. 751; *to clear out ditches*, p. 838; *to cultivate accdg to custom*, p. 838; *insert the special stipulons (if any) to be observed, first as to cultivon of arable, then of meadow or pasture land, & lastly as to the cuttg of underwood & preservon of timber, &c., see above*, pp. 839 *to* 841; *the details of these clauses in each case will depend on the nature of the farm & the custom of the district*; [*to preserve hedges*, p. 840]; *to allow lessor to inspect*, p. 842; [*to keep a field book*, p. 841]; *to protect game*, p. 842; *not to*

Parties.

Witnesseth.

Demise.

Parcels.

Habendum.

To lessee for term.

Lessee's covenants.

(*a*) See notes to preceding Precedents and Clauses.

(*b*) In the lease from which this precedent was taken the improvement rents were £5 per cent. on sums expended on improvements other than cottages, and £4 per cent. on sums expended on cottages.

PREC. V.

assn or underlet, p. 843; *covts* (*a*) *as to method of cultivon durg the last two or three yrs of tenancy, see above*, pp. 843 *to* 845, 855, 860, 863, 864; *to deliver up at end of term*, p. 845; *Power of re-entry*, p. 764; *Provo as to sales under distress of*

Lessor's covenants.

things covted to be consumed on the premes, p. 850; *covt by lessor to provide materials for repairs*, p. 846; *to allow tenant to destroy rabbits*, p. 846; *to compensate for unexhausted improvemts, see* pp. 847, 854, 856, 862, 865; *Provon that compenson is to be in substiton for statutory compenson*, p. 851; *for quiet enjoymt*, p. 849; *arbitron clause*, p. 852. IN WITS, &c.

[*Schdle of pcels.*]

VI.

PREC. VI.

Lease of SPORTING *Rights* (*b*).

THIS INDRE made the —— day of —— betn A., of, &c. (hinafter called the lessor, wch expression shl include the pson or psons for the time being entled to rece the rent hby reserved where the context so admits) of the one pt, & B., of, &c. (hinafter called the lessee, wch expression, &c., *see* p. 734), of the other pt; WITNETH that in conson of the rent & covts on the pt of the lessee hinafter reserved & contd, the lessor doth demise unto the lessee the exclusive

Witnesseth.

Parcels.

(*a*) The details of these clauses in each case must be settled, having reference not only to the nature of the farm and the county in which it is situated, but also to whether the tenant is restricted as to the mode of cultivation during the earlier part of the term.

(*b*) This demise must be by deed, see *Bird* v. *Higginson*, 6 A. & E. 824. By virtue of the Ground Game Act, 1880, 43 & 44 Vict. c. 47, this lease cannot interfere with the right of the tenants in occupation of the land, or of the lessor himself when he is in occupation, to kill ground game; but the lessee has full power to institute legal proceedings as if he were the exclusive owner of the sporting rights. As to the right to turn out game bred on other land, see *Birkbeck* v. *Paget*, 31 Beav. 403.

PREC. VI.

rt with friends, servants, & others, of shootg [huntg, coursg, fishg, fowlg], & sportg over, & takg all & all mner of game [woodcocks, snipes, quails, landrails] (*c*), hares, rabbits, wild fowl, & fish [& of trappg vermin] upon & from the lands, woods, & hds descd in the schdle hto, subjt as to such of the sd lands, woods, & premes as are in the occupon of tenants of the lessor to the rts conferred upon the sd tenants by their leases or agrmts of tenancy or by law; WITH power to enter upon all the sd premes for the pposes afsd or for preservg the game, wild fowl, or fish [& to have & carry away for his own use the game, rabbits, & other animals of the kinds afsd there killed & taken by him] (*d*); TO HOLD the same unto the lessee for the term of —— yrs, from the —— day of ——, determinable as hinafter mentd, payg therefor yrly durg the sd term hby grted, & so in proportion for any less time than a yr the rent of £——, witht any dedon, by eql qtrly [half-yrly] paymts, &c., *see* p. 740 [savg & reservg to the lessor full & free liberty to cut & fell timber on the sd lands & premes, & to cut down or grub up the underwood growg thron]; *covts by lessee to pay rent*, p. 744, *omitty the words* "except as afsd;" *to pay rates & taxes*, p. 744 "upon the sd rts & privileges hby demised or on the owner or occupier in respt thof;" AND will keep down the number of hares & rabbits on the sd premes so as to prevent them from becomg injurious at any time to the woods of the lessor or the crops of his tenants (*f*); AND shl from time to time pay to the lessor compenson for any mischief or damage that shl be done at any time by the sd hares & rabbits to the sd woods or crops [AND also will at

Reservation of rent.

Right of lessor to cut timber (*e*).

Lessee's covenants.

To keep down hares and rabbits.

To keep up a stock of game.

(*c*) See p. 835, note (*d*).

(*d*) This right, whether expressed or implied, makes the demise one of an interest in land as distinguished from a mere license, *Webber* v. *Lee*, 9 Q. B. D. 315.

(*e*) This right does not require express reservation, *Gearns* v. *Baker*, 10 Ch. 355.

(*f*) The lessor can recover under this covenant only nominal damages for injury inflicted on a tenant and not on himself, and for which he is not liable to the tenant, *West* v. *Houghton*, 4 C. P. D. 197.

PREC. VI.

the expiron or sooner determinon of the sd term leave in or upon the sd premes a breedg stk of game & hares eql to that wch now exists thron]; AND further that the lessee will not at any time durg the sd term assn or underlet the rts & privileges hby grted or any pt thof witht the previous consent in writg of the lessor; AND will at all times durg the sd term employ a pper keeper or keepers to protect the wood & underwood upon the sd premes, & to warn off all psons who durg the sd term shl sport or orwise poach or trespass thron in pursuit of game or rabbits; AND will pay all expses of & relatg to the prosecon of trespassers in search of game; AND will not do or permit any spoil or damage whatsr to the sd lands & premes or the crops thron; PROVD always, &c., *as in power of re-entry*, p. 764, *down to* "credors," then & in any such case it shl be lful for the lessor by notice in writg under his hand to determine this psnt demise, & thrupon these psnts & the rts & privileges hby grted shl absolutely cease & become void (but witht prejudice to any rt of action or remedy wch shl have accrued to the lessor in respt of any breach of any of the covts & provons hrin contd); *covt by lessor for quiet enjoymt*, p. 762, "of the rts & privileges hby demised"; [PROVD always, &c., that it shl be lful for the lessor at any time durg the term hby grted to determine the rts & privileges hby demised as to any pt or pts of the sd lands, woods, & premes not exceedg in the whole —— acres, makg compenson for the same by a redon of the rent hby reserved, the amt of such redon to be fixed in case of dispute by arbitron under the provon hinafter contd]. *Arbitron clause*, p. 852. IN WITS, &c.

Not to assign, &c.

To keep off trespassers, &c.

Power for lessor to determine lease.

Power to lessor to determine rights as to portion of the land.

[*Schdle of lands.*]

LEASES (MINING) (*a*).

PARCELS.

Unopened mines with surface.

1. All those pces of land, &c., *descd with refernce to schdle & map*, p. 417, & all coal, cannel, ironstone, bldg-stone, & clay, *or*, "& all that mine, bed, or seam of coal called ——, [& all other, if any, the mines, beds, or seams of coal overlaying, *or*, 'situated below,' the —— seam] & all seams or beds of fireclay associated & capable of being worked in conjunction with the —— seam, [or with any such other mine or seam of coal as afsd]," *or*, "& all mines, veins, & beds of tin, tin ore, copper, copper ore, lead, lead ore, & other metals, ores, & metallic minls whatsr," situate, lying, & being in or under the sd pces of land. Togr with full liberty & power for the lessees (*b*), their agents & workmen, &c., *to work mines, see below, form* v.

Mines without surface.

2. Full & exclusive liberty & license to search for, dig, mine, & work all coal, ironstone, bldg-stone, & clay, *for varions, see last form*, situate, lying, & being in or under all those pces of land, &c., & all [coal, &c., & other minls] there found to get, raise, convert [make merchantable & fit for sale] & carry away for their own use.

Opened collieries, &c., with part of surface.

3. All those pces of land situate, &c., & all the bldgs & erons thron, & the pits & shafts now open thron, &

(*a*) As to coal mines, see the Coal Mines Regulation Act, 1887, 50 & 51 Vict. c. 58, especially ss. 36, 37, 38. As to other mines, see the Metalliferous Mines Regulation Act, 1872, 35 & 36 Vict. c. 77, especially ss. 12, 13, 14. As to mines royal, see 32 Sol. J. 657.

(*b*) As mining leases are commonly taken by two or more lessees, the word "lessees" in the plural is used throughout these forms.

known as the —— colliery, & the engines, boilers, & other fixed machy, fixtures, & works, in, upon, under, or about the same: And also all coal, ironstone, bldg-stone, & clay, *or as the case may be*, within or under the same pces of land, or within or under all those pces of land, situate, &c.: And also all rlys, tramways, roads, way-leaves, easemts, & convenices belonging to or used in connon with the sd colliery & works.

Slate quarries.

IV. All those slate rocks, slate quarries, & beds of slate of whatsr description & quality, wch now are or at any time or times hrafter durg the term hby grted, shl or may be opened & discovered in, upon, or under the pces of land, &c.: And also all tramways, inclines, & other roads, levels, drifts, & works now existg upon or under the sd lands hinbfe descd [& upon or under the lands, &c., *being lands not comprd in the demise*], & used or intd for gettg, raisg, or transportg the slate from the lands & hds hinbfe descd, or for pposes connected thwith, & all trams, plates, & fixtures in or about the same.

Liberty to work mines (*a*).

V. And also liberty & power for the lessees, their agents & workmen, [to enter upon the lands afsd, &] to search for, win, work, get, raise, convert, [make merchantable & fit for sale] & carry away the [coal & other], produce of the mines & premes hby demised, but witht enterg upon the surface of any of the sd lands except the lands coloured —— on the sd map, [& witht disturbg or damaging any bldgs now existg [or hrafter erected for agricultural pposes or with the consent of the lessees (*b*)] on the sd lands coloured ——, & witht interferg with any rly, tramway, road, works, or privileges of any other lessees of coal, stone, or other mines or minls, belonging to the lessor].

Liberty to sink pits and make works.

VI. And also liberty & power for the pposes afsd & all other pposes connected with the due & pper managemt, workg, & developmt of the sd mines & premes, to use &

(*a*) See another form, p. 420.

(*b*) If the covenant extends to future buildings these restrictive words may sometimes be necessary to prevent unfairness to the lessees.

maintain the existg pits, shafts, rlys, tramways, roads, colliery, bldgs, machy, & works, on or under the sd lands, & to deepen existg pits & to sink such pits & shafts, to drive such planes, levels, adits, sumps, waterways, & airways, to erect, construct, & maintain such engines, machy, dressg floors, bldgs, workshops, storehouses, cottages, [coke ovens, iron furnaces, brick-kilns, lime-kilns], erons & things, & to form all such rlys, tramways, & other roads & communicons, spoil heaps, & other convenices, in, over, & under the sd lands as may be necy or convenient.

Liberty to quarry.

VII. And also liberty & power to quarry & get stone, sand, gravel, & other bldg & road materials from some convenient pt or pts of the sd lands [to be selected from time to time by the lessor], & to use & employ the same for the pposes of the mines hby demised, & the works belonging thto, [but not for sale, or for the eron of dwg-houses on the sd lands, nor for the eron of bldgs of any kind on any other lands, nor for any ppose whatsr connected with other lands or the mines thereunder], witht paymt of any rent or royalty for the same.

Liberty to dispose of building-stone, gravel, &c.

VIII. And also liberty & power to carry away & convert to their own use all bldg & other stone, gravel, sand, & road material, wch may be got in the course of workg the sd mines witht paymt of any rent or royalty for the same.

Liberty to get clay and make bricks (*c*).

IX. And also liberty & power to get common brick clay, sand, & other substances to be used in the manufacture of bricks on any pt of the sd lands [to be selected by the lessor], & to manufacture the same into bricks [at any such place as last afsd], & to use such bricks for the pposes of the mines hby demised, & the works belonging thto, witht paying any royalty for such as shl be used [for the pposes of the sd mines, or] for erectg, makg, or repairg any bldg, workshop, kiln, clamp, furnace, oven, or other eron or work hby [demised or] authorised to be erected or made on the sd lands, [but paying a royalty of —— shillings per thou-

(*c*) For another form, see lease of a brickfield, *post*, p. 918.

sand for all bricks wch shl be taken away from the same lands].

Liberty to use water.

x. And also liberty & power (so far as the lessor can grt the same) to use & enjoy for any of the works or operons afsd, any streams, watercourses, springs, or water in or upon the sd lands, & to divert, stop or dam up any such stream or watercourse, & to make, construct, & maintain any watercourses, culverts, drains, or reservoirs, for any of the pposes afsd, [but not so as to deprive any house of a pper supply of water, or in any way to foul or pollute the water, or to interfere with the rts of any other lessees of mines or minls belonging to the lessor or of any other psons entled to the use of such water]. *See Prec. I., clause* 4, p. 904.

The same, another form.

xi. And also liberty & power to use & divert all waters & watercourses within the sd lands for the workg of the sd mines, provd that such diversion of any watercourse can be made witht prejudice to any psons other than the lessor entled to the use thof, & to make any reservoirs or any watercourses or leats for conveyg the same or any other streams of water in, over, or through the sd lands for the pposes afsd.

Liberty to make a level and railway over, and deposit spoil on adjoining lands.

xii. And also liberty & power to open a level upon the adjoing lands of the lessor [as shown on the sd plan & thrin distinguished by the colour ——, & the words "proposed level:"] And to form a rly or tramway across the same lands from the sd level to join any line of rly or tramway now existg, or wch may hrafter be made: And also to deposit spoil on the same lands [at the place distinguished on the sd plan by the colour ——, & the words "proposed spoil bank:"] [Provd that the situon of the sd level, rly, tramway, & spoil bank shl be selected by the lessor or his agent].

Liberty to work adjoining mines through demised mines, or instroke.

xiii. And also liberty & power for the lessees, their agents & workmen, to work & get the [coal] & other minls from any adjoing mines now or at any time or times hrafter durg the term hby created, belonging or in lease to the lessees, & to bring the same through the mines hby demised, & the levels & workgs thof, & for that ppose to make drifts

& passages by way of instroke from such adjoing mines [& also to deposit the spoil of such adjoing mines on the lands hby authorised to be used for spoil heaps of the mines hby demised] (*a*).

Liberty to work demised mines through adjoining mines, or outstroke.

XIV. And also liberty & power for the lessees to make drifts & passages through the barriers or limits of the sd demised mines & premes for the ppose of workg & gettg the [coal] & other minls thfrom by way of outstroke through any adjoing mines now or hrafter durg the term hby created belonging or in lease to the lessees (*a*).

Liberty to make specified roads.

XV. And also liberty & power to make such roads, tram-roads, & rlys in, through, & over the demised premes to & from the —— Rly as may be necy, & to go & repass over the same, with or witht waggons, horses, or locomotive steam-engines, for the ppose of carrying coal & other minls from, & bringing materials to the demised premes.

Proviso as to sites of surface operations.

XVI. Provd always that the sites for all spoil-banks, bldgs, workshops [quarries, clay-pits, sand-pits, chalk-pits, brick-kilns, lime-kilns, coke-ovens, iron furnaces, dressg-floors, ventilatg-shafts, railroads, tram-roads, & other communicons], & for all surface operons of the lessees shl be in every case selected by the lessor or his agent.

Lessees not to obstruct lessor's mining operations.

XVII. Provd always that in the exercise of the afsd liberties & powers the lessees shl not obstruct or retard the gettg, workg, or developmt of the minls hinafter excepted & reserved to the lessor, or of the minls in, under, or upon any other lands belonging to the lessor.

Lessees not to do unnecessary damage.

XVIII. Provd always that the lessees shl, in the exercise of the powers & authorities hby grted, do as little injury or damage as can be to the lands afsd, or the timber, crops, or bldgs thron, or to the tenants or occupiers thof, & conform to the provons & restrons hinafter contd.

(*a*) See also Prec. I., clauses 8 and 36, pp. 904, 907; *Lewis* v. *Fothergill*, 5 Ch. 103; *Jegon* v. *Vivian*, 6 Ch. 742; *Whalley* v. *Ramage*, 10 W. R. 315.

EXCEPTIONS AND RESERVATIONS (*a*).

Exception of coal for support and barriers, &c.

I. EXCEPT & RESERVG unto the lessor so much & such pts of the coal in the mines or veins hby demised as is or may be required for the support of any house or bldg now existg on the sd land [or wch may hrafter be erected thron for agricultural pposes or with the consent of the lessees (*b*)]: AND ALSO all the coal within a distance of —— yards from each of the existg pits, & any new pit wch may hrafter be sunk to the sd mines or veins hby demised, wch last-mentd coal is to be left as a bulwark or support: AND ALSO all the coal within a distance of —— yards from the boundary of the lands hby demised, wch is to be left as a barrier, & wholly undisturbed by mining operons: [AND ALSO such of the coal in the mines or veins hby demised as the lessor shl remove in sinkg to, or workg the deeper mines or veins hby reserved, or wch he or they shl require to be left as a bulwark or support for any existg pit, or any new pit wch may hrafter be sunk to the sd deeper mines or veins].

General reservation of excepted minerals.

II. EXCEPT & RESERVG unto the lessor all mines & minls in & under the sd lands other than the mines & minls hinbfe exply demised: WITH LIBERTY & POWER for the lessor & psons authorized by him in that behalf, to search for, work, get, raise, convert, manufacture, & carry away the sd excepted or reserved mines & minls at his or their will & pleasure: AND WITH LIBERTY & POWER for the pposes afsd to sink, drive, erect, make & use all such pits, shafts, adits, water-ways, air-ways, bldgs, pumps, rlys, tramways, roads, engines, machy, spoil-banks, cinder-banks, & other conveniees, upon, through, or under the sd lands as shl be necy, or convenient, *where water rts are of primary importce, omit the word* "water-ways," *& add* "& to use any springs, streams, water-courses or waters, now or hrafter existg on

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(*a*) See other forms of reservations, p. 425, *et seq.*
(*b*) See p. 872, note.

or under any pt of the demised lands, & to divert the same into any other pt of the sd lands by drifts, or any other means," *& see Prec. I., clause* 10, p. 905.

Reservation of stone, gravel, &c.

III. AND ALSO EXCEPT & reservg unto the lessor all such stone, sand, gravel, & other bldg or road materials as he may require for use on his este, with full power to enter upon the sd lands, & to dig, search for, work, quarry, & carry away the same.

Timber felled to belong to lessor.

IV. PROVD ALWAYS THAT all the timber & other trees wch shl be felled in the exercise of the liberties & powers hinbfe given to the lessees shl belong to the lessor.

Power to lessor to use tramways, &c.

V. WITH LIBERTY & POWER for the lessor for the pposes afsd to use all rlys, tramways, & roads for the time being belonging to the lessees or used by them for workg the mines & minls hby demised, or the other pposes afsd, & to cross, intersect, & join any such rlys, tramways, & roads with or to other rlys, tramways, or roads, to be made under the liberty hby reserved to the lessor, & to extend or continue any such rlys, tramways, or roads as afsd, through the spoil-banks, yards, & other premes belonging to, or occupied by the lessees in connon with the mines hby demised.

Lessor to join in repairing tramways.

VI. PROVD ALWAYS that if the lessor or any psons authorized by him as afsd, shl use any rly, tramway, or road in common with the lessees, under the reservon hinbfe contd, the lessor shl pay & contribute a just proportion of the expse of keepg the same in repair & workg order, the amt of such proportion to be settled in case of dispute by arbitron.

Liberty to enter and inspect mines (*a*).

VII. WITH LIBERTY & POWER for the lessor & his agents, with or witht engineers, surveyors, or other psons at all reasble times durg the term hby grted to enter upon, inspect, & examine the sd demised mines & premes, & every pt thof, for the ppose of ascertaing the condon thof, & the mner of workg, carryg on, & managing the same, & the quantity of [coal], or other minls actually got, or for

(*a*) Compare the covenant as to this, *infra*, p. 894.

any other reasble ppose, & to take plans & measuremts of the workgs in the sd mines, & for the pposes afsd, to use, free of chge, all the shafts, pits, engines, ropes, tackle, machy, rlys, tramways, roads, works, & things now or hrafter existg on the sd demised premes, & to have all necy & reasble assistce of the miners, workmen, & others in the employmt of the lessees.

Proviso that lessor shall not obstruct lessees, and shall make compensation.

VIII. PROVD ALWAYS that the liberties & powers hinbfe reserved to the lessor shl be exercised & used, so as to cause as little obstron & hindrce as possible to the lessees in the enjoymt of the powers & privileges hby grted, & that the lessor shl pay to the lessees reasble compenson for all loss or damage wch they may sustain, by reason or in consequce of such exercise or use, the amt thof to be settled in case of diffce by arbitron.

REDDENDUM (*a*).

Fixed or dead rent.

I. PAYING thrfor [unto the lessor] yrly durg the sd term hby grted, & so in proportion for any time less than a yr, a fixed or yrly rent of £——, payable half-yrly on the —— day of ——, & the —— day of ——, the first paymt thof to be made on the —— day of —— [in respt of wch rent the lessees may work & get durg the half-yr for wch each such half-yrly paymt is made so much —— as at the rates hinafter mentd wd produce a galeage [footage] rent of £——].

Surface rent.

II. AND ALSO a yrly surface-rent of £—— for every acre, & so in proportion for any less quantity than an acre of the sd lands wch shl be taken or used by the lessees, for any of the works, operons, or other pposes afsd, every such surface-rent to be payable by eql half-yrly paymts on the half-yrly days afsd in every yr after the same shl become payable, & the first of such paymts to be made on such one of the same half-yrly days as shl happen next after the same shl have become payable.

(*a*) See p. 741, notes (*d*) and (*g*).

III. And also a galeage-rent or royalty, to be pd on the days hinbfe mentd, of —— for every customary ton (reckong —— lbs. to the ton) of —— got or raised from or out of the sd demised —— & premes [in excess of —— tons (*b*)], durg the half-yr immedly precedg each such paymt. Royalty or galeage rent.

IV. And also the galeage-rents or royalties follg to be pd on the days afsd, namely a galeage-rent or royalty of —— for every ton (reckong 2240 lbs to the ton), of coal got or raised from or out of the —— seam, & a galeage-rent or royalty of —— for every ton of 2240 lbs. got or raised from or out of the —— seam durg the half-yr immedly precedg each such paymt. Different royalties for different seams.

V. And also the galeage-rents or royalties follg to be pd on the days afsd, namely, A galeage-rent or royalty of —— for every —— lbs. of coal got or raised from or out of the demised premes, except small coal wch will pass through a screen with meshes —— inches square, *or*, "the bars of wch are [one] inch apart;" And a galeage-rent or royalty of —— for every —— lbs. of such small coal as afsd; And a further galeage-rent or royalty of —— for every —— lbs. of coal, not being small coal, impperly sold, used, or consumed under the denominon of small coal, such last-mentd galeage-rent or royalty to be in addon to the galeage-rent or royalty first hinbfe mentd. Different royalties for large and small coal.

VI. And also the royalties follg, to be pd on the days afsd, namely, At all times durg the sd term a royalty of —— for every —— lbs. of coal got or raised from or out of the demised premes; And also if & whenever the price of coal at the pit's mouth shl exceed the price of —— shillgs per ton, then an addonal royalty of —— pence for every —— lbs. of coal so got or raised for every shillg or fraction of a shillg by wch such price shl exceed —— shillgs per ton. Royalties varying according to market price.

VII. And also a rent of £—— payable half-yrly on the days afsd for every acre being one foot in thickness, & so in proportion for any less quantity than an acre, & for any Footage rent.

(*b*) That is, the quantity of tons the royalties on which will amount to the fixed rent.

greater or less thickness than a foot, of all coal wch shl have been raised or got out of the —— seam in the half-yr immedly precedg each such paymt.

Way-leave rent (*a*).

VIII. AND ALSO a way-leave rent of —— for every customary ton (reckong 2240 lbs. to the ton) of —— & other minls raised or obtained from any lands not comprised in this psnt lease, *or*, "the adjoing mines known as —— & —— as the same are now held by the lessees," & brought through, over, or upon the mines & premes hby demised, & the workgs thof under the liberty hinbfe grted in that behalf, such way-leave rent to be payable half-yrly on the days afsd for & in respt of all —— & other minls wch may be brought through, over, or upon the mines & premes hby demised, or the workgs thof, as afsd, durg the half-yr immedly precedg each such paymt.

Spoil-bank rent.

IX. AND ALSO a rent of £——, in addon to the sd way-leave rent, for every customary ton (reckong as afsd) of spoil or rubbish produced in workg —— & other minls raised or obtd from any lands not comprd in this psnt lease, *or as in last form*, & deposited on the lands comprd in this psnt lease under the liberty hinbfe grted, such last-mentd rent to be payable half-yrly on the days afsd for or in respt of all spoil or rubbish deposited as afsd durg the half-yr immedly precedg each such paymt.

The same, another form.

X. PROVD ALWAYS that if the spoil or rubbish produced in workg —— & other minls from —— be deposited on the lands hby demised under the liberty hinbfe grted, a rent of —— for every customary ton (reckong as afsd) of all —— & other minls worked as last afsd, shl be pd in addon to the sd way-leave rent, such rent to be payable half-yrly on the days afsd for or in respt of all —— & other minls worked as afsd durg the half-yr immedly precedg each such paymt.

Render in kind or money at

XI. RENDERG & DELIVERG on the sd premes durg the sd term unto the lessor for own use one eql —— pt of all

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(*a*) See *Morgan* v. *Davey*, 1 Cab. & Ell. 114.

[copper, copper ore, lead, lead ore, tin, tin ore, & all other metals, ores, & metallic minls] raised or got durg the sd term from the sd lands and premes by virtue of these psnts after the same shl have been dressed, made merchantable, [& fit for smeltg & refing], clear of all expses attendg the raisg, gettg, makg merchantable, & weighg the same, the sd respive pts or royalties hinbfe reserved to be rendered & delivered half-yrly on the —— day of ——, & the —— day of —— in every yr durg the sd term or oftener, if & so often as any such [ores, metals, & minls,] as afsd shl have been raised or got & made merchantable, [OR at the option of the lessor, PAYING in lieu of the sd reserved pts of the sd [ores, metals, or minls,] one eql —— pt of all moy arisg from the sale of all such [ores, metals, & minls,] as afsd, after deductg cost of carriage to the place of sale, such cost not to exceed —— per ton of —— lbs. [for copper & copper ore, —— per ton for lead & lead ore, & —— per ton for tin & tin ore, &c.] but witht any other dedon, the respive royalties reserved in moy as last afsd to become due & payable as soon as the price of the sd [ores, metals, or minls,] in respt whof the same shl be payable, shl be reced by the lessees, but in case the same shl not be reced by them within —— calr months from the sale, then at the expiron of such —— calr months.]

lessor's option in respect of metallic minerals.

XII. PROVD ALWAYS that the lessees may, in every half-yr of the sd term, get & raise out of the sd demised mines & premes, witht paying any royalty, *or*, "galeage," *or*, "footage rent" [so much coal as at the afsd royalty, *or*, "galeage," *or*, "footage rent," wd yield a rent of £—— for such half-yr, & also] so much coal as may be actually consumed in the engines or furnaces for the time being employed or orwise consumed in workg the same mines & premes, or supplied witht chge to the manager, colliers, or labourers employed thron, *when other mines are worked by instroke through the demised mines, say*, "engines or furnaces for the time being exclusively employed or orwise consumed exclusively in the workg of the demised mines & premes," *& add*,

Proviso as to coal which may be got without paying royalties, &c.

"But if any such engine or furnace shl be employed, or if the sd coal shl be consumed ptly in the workg of the demised mines & premes, & ptly in the workg of other mines, such a proportionate quantity only of such coal as shl be consumed in respt of coal raised from the demised mines shl be free from royalty, *or*, 'galeage,' *or*, 'footage rent.'" *And see Prec. I., clause* 16, p. 905.

Proviso as to manner of ascertaining footage rents.

XIII. PROVD ALWAYS that for the ppose of ascertaing the amt of footage rents payable under the reservon hinbfe contd, coal wch shl be left for pillars, supports, barriers, or bulwarks [or wch shl be found unworkable], shl not be taken into acct, & that the acreage shl be measured along the inclinon of the seams of coal, & that the thickness shl be measured perpendicular thto, so as to obtain the true contents of the coal raised or got.

Proviso as to surface rent and compensation to tenants.

XIV. PROVD ALWAYS that the surface rent payable as afsd shl be in addon to & not in lieu of any compenson wch may be required by & shl be reasbly due to any tenant of the lands in respt of wch the same surface rent shl be payable for any damage or loss occased to such tenant by the takg or using such lands by the lessees.

Proviso as to accidents.

XV. PROVD ALWAYS that if at any time durg the sd term the lessees shl be wholly prevented from workg the mines hby demised by fire or water, [arisg from unavoidable accident,] & if & so long as in such case they shl use their best endeavours to restore the sd mines to a condon fit for workg, & to resume & continue the pper workg thof, the sd yrly fixed or mine rent of £—— shl cease to be payable durg such time as such impediment to the workg of the sd mines shl continue.

Strike clause.

XVI. PROVD ALWAYS that if at any time durg the sd term it shl become impossible, owing to any strike (*a*) or combinon of workmen, or owing to any lock-out of workmen, made with the approval of a majority for the time being of the members of the —— [coalowners' associon], to raise or get a sufft quantity

(*a*) As to strikes, see *Stephens* v. *Harris*, 56 L. J., Q. B. 516.

of [coal] from the sd premes to continue the pper workg of the mines hby demised, then & in such case & so long as such impossibility shl continue, such pt only of the sd fixed or dead rent of £—— shl be payable as wd be payable as a galeage [footage] rent, after the rate afsd, in respt of the [coal] actually raised or got out of the premes [other than coal consumed in the engines or furnaces for the time being thron or supplied witht chge as afsd.]

Average clause (*b*).

XVII. PROVD ALWAYS that, if in any yr of the sd term the lessees shl not get & raise from the sd demised mines & premes such a quantity of [coal] as at the rates afsd wd produce for that yr galeage [footage] rents or royalties equivalent to the fixed or mine rent payable for that yr, *or*, "—— tons of ——," then & in every such case the lessees may, in the next succeedg yr, [one or more of the next —— succeedg yrs] of the sd term, but not aftwds (*c*), get & raise from & out of the sd mines & premes such a quantity of [coal] as shl be required to make up the deficiency in such previous yr witht payg any rent or royalty for the same, other than the sd fixed or mine rent.

LESSEES' COVENANTS.

To pay rents.

I. THAT the lessees will durg the sd term pay, render, or deliver the sevl rents, royalties, dues, & reservons hinbfe reserved or made payable on or at the days or times, & in the mner hinbfe appted for the paymt, render or delivery thof resply, clear of all dedons whatsr (except landlord's ppty tax).

To pay rates and taxes.

II. AND WILL, *as in form* IV., p. 744, imposed upon or in respt of [the sd demised mines & premes or (*d*)] the coal,

(*b*) As to the importance of this clause, see *Bishop* v. *Goodwin*, 14 M. & W. 260.

(*c*) In some districts this is not restricted to a limited number of years.

(*d*) Where a licence only to get minerals is granted, omit the words

ores, metals, or minls got thfrom, or the proceeds of the sale thof, or the rents, royalties, or reservons hby reserved or made payable [or any land entered upon, or bldg, eron, or work erected or made under or by virtue of these psnts], or on the owners or occupiers in respt thof, the landlord's ppty tax only excepted.

To pay compensation to tenants for surface damage.

III. AND THAT in case the lessees shl at any time or times durg the sd term occupy or use any of the lands afsd for the ppose of the sd mines or works under the liberty in that behalf hby grted, or shl, in the exercise of any liberty or privilege hby grted, injure or damage any of the lands afsd, or any bldgs, erons, or crops thron, or the preparons for such crops, then & in every such case the lessees will pay to the tenants & occupiers of the lands so occupied, used, or injured as afsd, pper compenson for or in respt of such occupon, use, or injury, such compenson to be determined in case of diffce by arbitron, & will indemnify the lessor from all actions, pcdgs, claims, & demands on the pt of such tenants or occupiers or any other psons in respt of such occupon, use, or injury.

To pay lessor for land permanently injured.

IV. AND WILL in addon to the compenson payable to the tenants or occupiers of the lands so occupied, used, or injured as afsd, pay to the lessor at the expiron or sooner determinon of the sd term, compenson for all permanent damage done to such lands.

To give lessor notice before entering on land.

V. AND WILL not at any time durg the sd term enter upon any of the lands afsd for the ppose of commencg any new openings or other works, or felling any timber or trees, or any other ppose, witht givg to the lessor or his agent one week's previous notice in writg, specifyg the land so intd to be entered upon & the object of enterg upon the same.

To work mines effectually (*a*).

VI. AND WILL at all times durg the sd term unless prevented by [fire or water arisg from] unavoidable accident [or

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here bracketed, and substitute the words "by virtue of the licences hinbfe contd" for the word "thfrom."

(*a*) See *Wheatley* v. *Westminster Brymbo Coal Co.*, 9 Eq. 538. Such a covenant cannot safely be relied upon to take the place of a fixed rent.

by strikes or combinons of workmen or owing to any lock-out of workmen made with the approval of the majority for the time being of the members of the —— [coal owners' associon]] effectually & vigorously work, develop, & carry on the sd mines, & will at all times, unless prevented as afsd, keep a sufft no. of [at least ——] able miners constantly employed for such ppose.

The same.

Another form.

VII. And will throughout the sd term in the best & most effectual mner that can be devised & with a sufft no. of able workg miners & labourers & witht intermission, except when prevented by unavoidable accident or impediment or durg the execon of repairs [or by strikes, &c., *as in last form*], explore, search for, drain, & work the sd mines & minls hby demised, And for such pposes will make, erect, & maintain in a pper course of workg & state of repair, sufft shafts, adits, levels, outlets (*b*), bldgs, engines, machy, & apparatus, And will drive in a pper & workmanlike mner all levels of every description, within the limits afsd, on the course of the seams [lodes] in or under the sd lands, & orwise carry out & exercise the liberties & powers hby grted accdg to the best & most approved modes & course of workg, And will pperly & sufftly & in due course of ming operons work all seams [lodes] wch now are or hrafter durg the continuce of this lease may be discovered within the lands afsd, & wch can be worked so as to remunerate the outlay thron, & for the ppose of ascertaing what seams [lodes] can be worked with a remunerative result will give to every seam [lode] wch promises such a result a pper & sufft trial when in the regular course of workg the same can be reached, And will at all times actively prosecute & carry on the workgs upon each seam [lode] wch shl have been begun to be worked (except such as shl upon trial have been found incapable of being worked with a remunerative result) until the same shl be wrought & driven through to the extent of the ground comprd within the limits afsd, And, in case of any dispute

(*b*) As to coal mines, see 50 & 51 Vict. c. 58, ss. 16, 17, 18.

or diffce arisg as to the propriety or sufficiency of the trial of any seam [lode] or the probability of workg the same with a remunerative result or the sufficiency of the no. of men employed upon any seam [lode] or work or the sufficiency or efficiency in other respts of the workg or in anywise in relon thto, the mre in diffce shl be refd to arbitron.

Not to discontinue working.

VIII. AND WILL not at any time durg the sd term, unless prevented, &c., *as in form* VI. or VII., discontinue the effectual workg of the sd mines or any of them for the space of —— weeks in the whole in any one yr or for any consecutive period exceedg —— weeks.

To get enough coal to produce minimum rent.

IX. AND WILL durg each half-yr endg on the —— day of —— & —— day of —— of the sd term or until the whole of the sd seam of coal [mines & minls hby demised] shl have been worked out [unless prevented, &c., *as in form* VI. *or* VII.] get such a quantity of [coal] from the sd mines as, accdg to the galeage [footage] rent or royalty hinbfe reserved, will produce a clear half-yrly rent of £——, *the minimum rent.*

To carry on special works.

X. AND FURTHER (& so that this covt shl not be deemed in any way to restrict or limit the genl covts hinbfe contd resptg the workg of the sd mines) will forthwith commce & carry on the follg works & operons with the object of efficiently & vigorously explorg & workg the —— seam [lode] (that is to say) the —— level [adit] shl be driven eastward at the rate of —— fathoms at the least in every yr by —— able miners at the least, or such greater no. as may be requisite, until the same shl be wrought or driven through the ground compd in the limits afsd, & that such other drivages & works in addon to those hinbfe specially mentd, shl be from time to time carried on as shl be necy or pper for efficiently developg & workg the —— seam [lode]. *And see Prec. I., clause* 28, p. 907.

To work mines properly.

XI. AND WILL at all times durg the sd term search for, win, work, & develop the mines [seams of coal], & premes hby demised in a pper, skilful, & effectual mner, & accdg to the best & most approved practice of searchg for, winng,

workg, & developg similar mines & minls [whether the same be] adopted or in use in the district [or not] [& in complice with the provons of the Coal Mines Regulon Act, 1887], & with as little damage as possible to the surface of the sd lands, & to the messes & bldgs, & other erons, & the timber & crops thron [& also with as little damage & interferce as possible to & with the workg of the other mines & minls [seams of coal] lying & being under the lands afsd, but not comprd in this demise], & so as to work & raise the largest possible quantity of [coal] witht causg any damage or injury to the mines [seams of coal] hby demised.

Not to injure mines.

XII. And will not at any time commit or suffer within the mines & premes hby demised [or in any other mines connected or worked thrwith] any wilful or negligent act whby the mines hby demised [or any other mines or minls lying & being under the lands afsd, but not comprd in this demise], may be damaged by or overchgd with water or foul air, or whby the workg of any such mines or minls may be impeded or prevented, [or wch may occasion or bring any creep, crush, or thrust upon the levels, air-courses, water-courses, or works of the sd mines, or any pt thof].

To protect mines from encroachment.

XIII. And will at all times employ all reasble care & diligce to protect the mines & minls hby demised [& all other mines & minls, *or* "seams of coal," lying & being under the lands afsd, but not comprd in this demise] from being injured, encroached or trespassed upon, or surreptitiously worked, & in the event of any such injury, encroachmt, trespass, or surreptitious workg, will take such measuremts as will show the extent of the same & enable the lessor to recover compenson for any loss occasd thby.

To keep works in repair, and deliver up at end of term.

XIV. And will at all times durg the sd term keep in good & pper repair, order, & condon all the levels, adits, drifts, shafts, pillars, bulwarks, pits, engines, machy, pumps, water-courses, air-courses, bldgs, sheds, workshops, erons, rlys, tramways, roads, & other works & convenices belonging to the sd mines hby demised or used in connon thrwith, except any works or things wch may become unnecy for the

further workg of the sd mines [& wch may not be necy or useful for the workg of other mines & minls lying & being under the lands afsd, but not comprd in this demise], & the same, in such good & pper repair, order, & condon, will deliver up to the lessor, at the end or sooner determinon of the sd term [or at the time when the same shl become unnecy for the workg of the sd mines hby demised] (*a*).

That the lessor may repair on default of lessees.

XV. AND THAT in case the lessor, or his agent, shl at any time durg the sd term give or leave on the sd demised premes a notice in writg to the lessees, to exte or do any such repairs or works as ought to be exted or done by virtue of the covts hinbfe contd, & the lessees shl neglect or omit to exte & do the same within the period of three calr months from the date of such notice, the lessor shl be at liberty to enter upon the mines & works hby demised, & to exte & do the necy repairs & works, & the lessees shl repay the expses of such repairs to the lessor, on demand, & in default of paymt the amt so expended shl be recoverable by distress (*b*) or orwise, in like mner as if the same had formed pt of the rents hby reserved.

To fence pits (*c*).

XVI. AND WILL at all times durg the sd term, at their own expse, make & maintain sufft fences for the proton of man & beast round every pit shaft & open pt of any adit or other work already sunk or dug, or wch hrafter shl be sunk or dug, within the limits afsd.

To fence pits and railways, &c. (*c*).

XVII. AND WILL, from time to time, & at all times durg the term hby grted, pperly & securely fence off, & keep fenced off from the adjoing lands by means of a substantial stone wall [post & rail fence] at least —— feet in height, or some other sufft fence, all the pits, shafts, rlys, tramways, & works of the lessees, used in connon with the mines hby demised: [AND whenever any such rlys or tramways shl be

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(*a*) See also p. 896, form L.

(*b*) See p. 816, note.

(*c*) See as to quarries, 50 & 51 Vict. c. 19; and as to coal mines, 50 & 51 Vict. c. 58, ss. 37, 49 (rules 6, 18); and as to other mines, 35 & 36 Vict. c. 77, s. 23 (rules 6, 7).

made through existg hedges, banks, walls, or fences, will make & maintain pper gates across the rly or tramway at such openings: And will at the expiron, or sooner determinon of the sd term, at the option of the lessor, eir leave such gates in good repair & condon, or block up the openings so made with a pper hedge, bank, wall, or fence, so as to correspond with the adjoing hedge, bank, wall, or fence (*d*).]

To fill in or fence useless shafts (*e*).

xviii. And will, whenever any pit or shaft shl become unnecy or useless, eir fill up the same with earth or rubbish, or surround the same with a good & substantial wall of —— inch brickwork or masonry, at least six feet in height, or cover the same with a good & substantial arch, constructed to the satisfon of the lessor or his agent, unless he shl signify his desire that the same shl be left open, in wch case the same shl be left open accdly, togr with all air-courses, water-courses, passages & other works & convenices belonging thto in good & serviceable condon.

Not to make unnecessary shafts and to secure shafts (*f*).

xix. And will not open or make any unnecy adits, pits, or shafts on the sd lands, & will durg the sd term well & sufftly bind, support, maintain & secure with timber or other good & sufft materials all shafts, tunnels, adits, drifts, & workgs that may be made or used in the sd lands, & the same so bound, supported, or secd at the end or sooner determinon of the sd term will quietly yield up to the lessor.

Not to interfere with roads or streams.

xx. And will not interrupt or interfere with any existg road, rly, tramway or other communicon, or with the natural course of any stream or water-course save as hby expressly authorised: And will not throw any spoil, rubbish, or refuse into any stream flowg through the lands afsd.

To make slime pits for purifying mineral water.

xxi. And will forthwith or as soon as required by the lessor or his agent [upon or within a suitable pce or pces of

(*d*) The words between brackets will be omitted when the railway itself is to be fenced.

(*e*) See p. 888, note (*c*).

(*f*) See as to coal mines, 50 & 51 Vict. c. 58, s. 17; and as to other mines, 35 & 36 Vict. c. 77, s. 23 (rule 8).

land to be from time to time, as occasion shl require, set apt & appropriated for this ppose by the lessor or his agent], dig & construct for the interception, reception, & purifyg & cleansg of the minl water comg from the dressg-floors, or any of them, bfe such water shl fall or be permitted to flow (directly or indirectly) into the river —— or other natural channels of drainage, a sufft no. of pits of sufft dimensions, & of such constron in all respts, as shl be pperly adapted for purifyg & cleansg the sd minl water, & in case of any further measures being required for that ppose will take & carry out such further & other necy & reasble measures as may be required for the efficient purificon & cleansg of the sd minl water bfe the same is permitted to flow into the sd river or other natural channels of drainage, the no. & dimensions of such pits, & the choice in other respts of the pper means for that ppose, & any incidental question in relon thto, in case of dispute, to be settled by arbitron.

To return water taken from river.

XXII. And will return all water wch shl have been taken or intercepted from the river —— for workg the water or pumpg wheels, or for any of the other pposes of the sd mines & works, to the same river, or deliver the same for the use of the lessor or the lessees of other mines belonging to him, at such point or points on the lands afsd, & at such level as may be reasbly prescribed in that behalf by the lessor or his agent.

Not to take water required for mills.

XXIII. And will not do or suffer any act or thing whby any stream, spring, or other water wch shl or may be used for workg any mill or machine shl or may be in any mner lessened or injuriously affected.

To prevent trespassing of workmen.

XXIV. And will erect & keep pper gates & fences for protectg the tenants & occupiers for the time being of the sd lands from any trespass on the pt of the workmen & other psons employed in the sd mines: And will take such reasble means for stoppg any such trespass as may be required by the lessor or his agent, & (if so required) will dischge from their employmt any workman or pson commitg such trespass.

To prevent poaching.

XXV. And will dischge any workman or other pson employed in the sd mines who shl [keep a dog, or] poach, disturb, take, or kill the game or rabbits (*a*) on any land belonging to the lessor.

Not to work near buildings, &c.

XXVI. And will not at any time do or permit any damage or injury to any house, bldg, or other eron, or garden now existg, [or any bldg hrafter erected for agricultural pposes, or with the consent of the lessees (*b*),] on the land afsd [or any reservoir on the sd lands], or do or suffer any act or thing whatever wch may in any wise tend to the injury or prejudice of the owner, tenant or occupier thof: And (in order effectually to avoid such damage or injury) will not allow any workgs to be carried within —— feet of the surface under any such house, bldg, eron, garden [or reservoir], as afsd, nor within a lateral distance of —— feet thfrom on any side thof: And if any damage or injury shl be occasioned to any house, bldg, eron, garden [or reservoir], by any breach of this covt, then & in such case will pay to the lessor & his tenants full compenson for such damage or injury [& for all consequential damage caused by the escape of the water from any such reservoir], the amt of such compenson in case of diffce to be settled by arbitron: And will keep the lessor indemnified agst all actions, pcdgs, claims, & demands in respt of any damage or injury.

To work at sufficient depth beneath river, &c.

XXVII. And will not work any ground beneath the river —— within a distce of —— yards from the bed thof, nor beneath the lands coloured —— in the sd plan within a distce of —— yards from the surface.

Not to place spoil banks near houses.

XXVIII. And will not place or allow any spoil banks or other rubbish or refuse to be deposited or laid, or any dressg-floors to be made, except at a reasble & sufft distce from any house or garden.

To leave barriers at boundary of land.

XXIX. And will not work any of the sd mines or minls lying within the distce of —— fathoms measured inwards

(*a*) See the Ground Game Act, 1880, if the land is demised.

(*b*) See p. 872, note.

in a horizontal straight line from the limits of the lands afsd, to the intent that the sd mines & minls lying within the distce afsd shl be left as barriers & wholly undisturbed by any mining operons.

To preserve surface mould.

XXX. And will not cover with ores or rubbish or orwise waste any meat earth, mould, or soil within the lands afsd, but will as far as circes will admit preserve & lay aside the same in heaps on some convenient pt of such lands for the use of the lessor or the occupiers for the time being thof.

To weigh minerals, (*a*).

XXXI. And will place at the entrance to each adit, pit, or workg, or in some other convenient place or places upon the lands afsd, to be approved of by the lessor or his agent, one or more good & pperly constructed weighg machine or machines, And will cause to be weighed thrin all [coal & other minls] raised or got under or by virtue of these psnts [& also all [coal & other minls] brought from any adjoing mines through, on, or over the mines & premes hby demised under the liberty in that behalf hinbfe grted], And will cause the weights & quantities so ascertained to be forthwith duly registered at the weighg house or houses, And will also at the close of each day cause the total quantity of the [coal & other minls] weighed as afsd durg the day to be entd in pper books of acct to be kept for that ppose at the countg-house of the sd colliery [mines] in such mner that all [coal & other minl] subjt to galeage, *or*, "footage," [or way-leave] rents or royalties or in respt whof any exemption is claimed shl be clearly distinguished & shown.

That lessor may inspect weighing machines.

XXXII. And will permit the lessor, his agents & servants, at all reasble times durg the term to inspect & test the accuracy of the weighg machine or machines to be kept as afsd, & the weights used thrin.

That lessor's agent may be present at weighing.

XXXIII. And will permit the lessor to employ a pson to be psnt at the weighg of all [coal & other minls] weighed as afsd, & to keep an acct thof & to check the accts kept by the lessees.

(*a*) As to coal mines, see 50 & 51 Vict. c. 58, ss. 12—15.

That lessor may object to weigher.

XXXIV. And will not employ as weigher any pson who shl be objected to by the lessor, or his agent, for any reasble cause, & if any dispute shl arise as to the reasbleness of such objon the same shl be refd to arbitron.

To give notice to lessor of time of weighing minerals.

XXXV. And will give twenty-four hours' notice in mner afsd to the lessor, or his agent, of the time of the weighg [or divon] of the copper, copper ore, tin, tin ore, lead, lead ore, & other metals, ores, & metallic minls raised or got by virtue of these psnts.

To deliver account of ores sold.

XXXVI. And will within two days after the delivery or consignmt of any ores, metals, or minls to or on acct of any pchaser or pchasers thof deliver to the lessor, or his agent, a just acct in writg of the ores, metals, or minls so delivered or consigned with sufft parlars as to price, time of paymt, & orwise.

To keep accounts (*b*).

XXXVII. And will at all times keep at the countg-house or office of the sd mines accurate & regular accts containg full entries of all [coal] & other minls raised or got by virtue of these psnts [& made marketable & of the sales thof] & of the times of the removal of the same from the premes, togr with all such parlars of weights, quantities, dates, [sales,] & other facts & circes as may be necy or pper, And will if required verify such accts by the statutory declaron of their clerk or book-keeper & also of the lessees themselves, so far as their knowledge extends.

To deliver accounts half-yearly.

XXXVIII. And will on each of the half-yrly days hinbfe appted for paymt of rents & royalties deliver to the lessor, or his agent, a true acct showg the total amt of [coal & other minls] raised or got durg the precedg half-yr by virtue of these psnts, & distinguishg the amt of [coal & other minls] subjt to galeage, *or*, "footage," rents or royalties from the amt in respt of wch any exemption is claimed [& the parlars of all sales thof] [& also an acct of all [coal & other minls] brought from any adjoing mines through or over the mines & premes hby demised under the liberty in that

(*b*) As to coal mines, see 50 & 51 Vict. c. 58, s. 33.

behalf hinbfe grted] And will if required verify such accts, &c., *as in precedg form.*

To keep plans of mines (*a*).

XXXIX. And will at all times durg the sd term keep [& will, on each of the half-yrly days hinbfe appted for paymt of rents & royalties, deliver to the lessor, or his agent] true & correct plans & sections of the mines hby demised & all the workgs thof, [& of any mines worked through or the minls from wch are brought through, under, or over the mines & premes hby demised] [& of all seams, veins, or lodes wch shl have been discovered thrin], upon wch the extent, posson, & actual condon of the works shl at least once in every half-yr be accurately set forth & delineated; such plans & sections to be made to the scale of one in —— on the horizontal or ground plane, & of one in —— in the vertical plane, [& to be kept at the countg house of the sd mines].

To allow lessor to inspect accounts and plans.

XL. And will permit the lessor, or his agents, at all reasble times to have access to & inspect & take copies of or extracts from the books of acct, plans & sections, to be kept as afsd.

To deliver lists of workmen.

XLI. And will on the —— day of —— in every yr durg the sd term, or within —— days thrafter, deliver to the lessor, or his agent, a full & true list of the names of all the psons employed in workg the sd mines, specifyg the names of the miners or labourers who durg the yr next precedg such —— day of —— shl have been employed in workg or drivg each seam or lode.

To mark boundaries of mines.

XLII. And will make & maintain distinct & well-secd marks in the roof, side, or other convenient pt of every level or headway wch shl cross the boundary of the mines & premes hby demised into or out of any adjoing mines & workgs so as to enable the lessor, or his agent, at all times to determine the accuracy of the surveys kept by the lessees, & of the return of minls based thron.

To allow lessor to

XLIII. And that the lessor, or his agents, servants, &

(*a*) As to coal mines, see 50 & 51 Vict. c. 58, ss. 34, 38. As to other mines, see 35 & 36 Vict. c. 77, s. 19.

workmen, shl be at liberty at all reasble times durg the sd term, to enter into & upon, & to inspect the mines hby demised, & the works belonging thto, & any adjoing mines or workgs carried on or worked in connon thwith, & to make surveys & plans thof, & aftwds to return thfrom witht any hindrce or interruption, & shl for such pposes be at liberty to use the machy & plant employed in or about the sd mines & works, & shl be effectually assisted by the agents, workmen, & servants of the lessees. inspect workings (*b*).

XLIV. AND WILL make & keep in repair pper bridges & passages for the safe & convenient passage of the occupiers for the time being of the sd lands, & other psons, & their cattle, carts, & carriages, over any watercourse, or open pit of any adit or adits, or other works, wch shl be made or erected by the lessees, within the lands afsd: AND WILL keep open the roads & paths over & across the sd land, & provide pper & convenient means of passage where the workgs shl interfere with the roads or paths now existg. To make bridges, &c., for convenience of occupiers.

XLV. AND WILL in each week durg the sd term supply the lessor with —— tons of —— coal, to be delivered at ——, at a price not exceedg £—— per ton, such coal to be free from rent or royalty. To deliver coal to lessor for his own use.

XLVI. AND WILL from time to time, upon the lessor, or his agent, givg one calr month's notice in writg for that ppose, deliver to the lessor, or his agent, free of chge, at the time specified in such notice, & at some place used by the lessees for the deposit of stone, sand, gravel, or road materials, such quantities of stone, sand, & gravel, in a merchantable condon, & of other materials for the makg, maintaing, & repairg of roads, or for use for any other pposes whatsr on the este of the lessor, as shl from time to time be so required, & shl permit such stone, sand, gravel, & road materials to be taken & carried away by the psons employed by the lessor, & give pper facilities for enablg them so to do: PROVD ALWAYS that subjt to the reservon of the lessor of To deliver stone and gravel, &c., to lessor.

(*b*) See also p. 842, form XXII., and p. 877, form VII.

such stone, sand, gravel, or road materials as he may require as afsd, & subjt to the lessees duly observg the covt lastly hinbfe contd, the lessees shl be at liberty to make merchantable & dispose of all other stone, sand, gravel, & road materials got by them in the course of their sd workgs witht renderg any acct or payg any dues in respt thof.

Not to obstruct lessor in working excepted minerals.

XLVII. AND WILL exercise the rts, licences, & privileges hby grted in such a mner as to offer no unnecy or reasbly avoidable obstron or interruption to the developmt & workg by the lessor of the mines & minerals hby excepted & reserved, or the transport, convee, or conversion of the produce thof, or to the use & enjoymt of any other rt hby reserved to the lessor.

Not to cause damage.

XLVIII. AND WILL, in using & exercisg the licences & powers hby grted, commit no trespass, & do as little damage & injury as reasbly may be to the lessor, or his tenants, & to the surface & freehd of the sd lands.

Not to allow unauthorised persons to use wayleaves, &c.

XLIX. AND WILL not at any time durg the sd term authorise or suffer any pson other than the lessees, or their agents, workmen, or servants, to use any way-leave, drift, level, instroke, outstroke, water-way, or other communicon from, through, over, or under the lands afsd, or used or occupied in connon with the sd mines.

To deliver up at end of term.

L. AND WILL, at the expiron or sooner determinon of the sd term, deliver up to the lessor the sd demised premes with all —— except such fixtures & things as tenants are by law entled to remove, & wch the lessor shl not under the provon in that behalf hinafter contd require to be left, in such good & sufft state of repair as afsd, & in all respts in such state & condon as shl be consistent with the due pformee of the sevl covts on the pt of the lessees hrin contd, & in pper order for the future workg & prosecon of the mines & works hby demised.

To observe Act regulating mines.

LI. AND WILL at all times durg the sd term in the workg of the sd mines, strictly conform to & observe all the regulons & requiremts contd in or imposed under the authority of the Coal Mines Regulon Act, 1887 [the Metalliferous Mines

Regulon Act, 1872], or any other act or acts for the time being in force affectg the premes, & keep the lessor effectually indemnified agst all penalties, damages, costs, & expses occasd by any breach by the lessees, or any pson or psons employed in the sd mines, of any such regulons or requiremts.

LESSOR'S COVENANTS.

For quiet enjoyment.

I. That the lessees payg & renderg the sevl rents, royalties, & dues hby reserved & made payable, & observg & performg all the covts, stipulons, & condons hrin contd, & on their pt to be observed & pformed, shl quietly hold & enjoy the mines, minls, liberties, licences, lands (*a*), & premes hby demised (*a*) & grted for & durg the term hby grted witht any interruption from or by the lessor or any pson rtfully claimg under or in trust for him [*or*, under the sd indre of settlemt of the —— day of ——, *or*, "the sd will of the sd ——."]

To renew (*b*).

II. That if the lessees shall be desirous of takg a new lease of the mines & premes hby demised after the expiron of the sd term of —— yrs hby grted, & shl at least six calr months bfe the expiron thof signify such their desire by a notice in writg to be delivered to the lessor or his agent, or left at the last known place of abode of the lessor in England, the lessor & all other necy pties, if any, will at or bfe the expiron of the sd term, at the costs & chges of the lessees, make & exte to them a new & effectual lease of all & singr the sd mines & premes hby grted or demised for a term of —— yrs, to commce from & after the expiron of the term hby grted, at & under the like rents, royalties, & dues, & with & subjt to the like covts & provons as are hrin contd, except this psnt covt for renewal.

(*a*) If licences only are granted without any demise of the lands omit the words "lands" and "demised."

(*b*) See p. 763, note (*e*).

PROVISOES.

Power of re-entry (*a*).

1. Provd always, &c., that if the sd rents, royalties, & dues hby reserved or made payable, or any of them or any pt thof resply shl at any time be in arrear or unpd for three calr months (*b*) after the same resply shl be payable, whether the same shl have been legally or formally demanded or not, *or*, "& demand for the same shl have been made at the countg-house or office of the sd mines by the lessor or his agent," or if the lessees shl make default in pformg or observg any of the covts, provons, or condons hrin contd, & on their pt to be pformed & observed [or if the lessees, while the sd demised premes or any pt thof shl remain vested in them, shl become subjt to the bkpt laws, or shl enter into any arrangemt or composon with or for the benefit of their credors eir under the provons of any bkptcy act for the time being in force or orwise, or suffer an exon to be levied agst their goods or ppty, or if their assns being a Co shl enter into liquidon whether compulsory or voluntary] then & in any such case it shl be lful for the lessor, although he may not have taken advantage of some previous default of a like nature, to re-enter upon the sd demised mines, lands, & premes, or any pt thof in the name of the whole (*c*): &

Relief against forfeiture.

(*a*) The power of the court under the Conv. Act, 1881, s. 14, as amended by the Conv. Act, 1892, to relieve against a condition of re-entry in a lease extends to mining leases and grants of licences for mining purposes (see definition in s. 2); but with an exception of covenants against assigning or underletting, &c., and conditions of forfeiture on bankruptcy, &c. (see the definition in s. 2), or an execution against the lessee, and covenants to allow the lessor to inspect the books, weighing machines, &c., and the mines, see sub-sec. 6, which is not affected as to mining leases by sub-sec. (2) of the Act of 1892, see sub-sec. (3) (*b*) of that Act.

(*b*) In a lease under the Settled Land Act, 1882, this must not exceed 30 days, see s. 7 (3).

Variation for licences.

(*c*) If licences only are granted, without any demise of the lands, say, in lieu of "to re-enter, &c.," "by any instrumt under his hand & seal duly notified to the lessees to determine the sevl liberties, licences, & powers hinbfe grtcd to the lessees."

thrupon this psnt lease or grt & the liberties, licences, & powers hinbfe grted, & every clause & thing hrin contd shl absolutely cease, determine, & become void, but witht prejudice to any rt of action or remedy wch shl have accrued to the lessor [eir pty] in respt of any breach of any of the covts or provons hrin contd.

Power to lessees to determine lease if coal lies too deep.

II. PROVD ALWAYS, &c., that if the lessees shl sink a shaft or bore to the depth of —— from the surface of the sd lands, witht findg a seam of coal of the thickness of —— at the least, it shl be lful for them, at any time [within —— calr months] thrafter, to determine this demise by givg —— calr months' notice in writg to the lessor or his agent, & upon the expiron of such notice, & provd the lessees shl upon such expiron [or within —— days thrafter] render & pay all rents, dues, & royalties, compenson for damage, & other moys wch may be then due & payable under these psnts to the lessor or his tenants, & shl deliver up these psnts to the lessor or his agent, then this psnt lease or grt, & the liberties, &c., *as in last form*.

Power to abandon working in case of a fault.

III. PROVD ALWAYS, &c., that, if by reason of any fault in the coal-measures the sd seams of coal [any seams of coal, of the thickness of —— at least, found by the lessees] shl be thrown down under the sd lands to a greater depth than ——, it shl be lful for the lessees to abandon & not to work such pt of the same seams as shl lie beyond such fault, & they shl not be bound to prove the extent of such fault.

Power to surrender if coal is of bad quality or exhausted (*d*).

IV. PROVD ALWAYS, &c., that if it shl appear, after a full & sufft trial & exploron, that the coal hby demised is of a bad, soft, or unmarketable quality, or if all the coal wch havg regard to the condons & circes in wch similar seams are wrought in the district, may fairly be deemed to be workable with profitable results, shl be found to be exhausted, then, & in any such case the lessees may determine this demise at the end of any yr of the term hby grted by givg in the event

(*d*) As to the importance of this clause, see *Bute* v. *Thompson*, 13 M. & W. 487; *Ridgway* v. *Sneyd*, Kay, 627.

of the first mentd contingency twelve calr months', & in the event of the exhaustion of the coal, six calr months' notice in writg to the lessor or his agent, & upon the expiron of such notice, &c., *as in form* II.: Provd that the sufficiency of any such trial & exploron, & the fact whether such exhaustion of coal as afsd has occurred, shl in case of dispute be submitted to arbitron.

The same, if working is unsuccessful.

V. PROVD ALWAYS, &c., that in case the lessees shl be unsuccessful in explorg & workg the mines & lodes within the lands afsd it shl be lful for them to determine the sd term hby grted, previous to the expiron thof, on givg —— calr months' notice in writg of such desire to the lessor or his agent, & at the expiron of such notice, &c., *as in form* II.

Power to lessees to remove engines, &c.

VI. PROVD ALWAYS, &c., that it shl be lful for the lessees (having first pd & dischged the sevl rents, royalties, & sums of moy payable by them by virtue of these psnts, & having observed & pformed all the covts & condons hinbfe contd), at the expiron or sooner determinon of the sd term, or within —— calr months thrafter [unless the same shl be determined under the power of re-entry hinbfe contd, & in that case at any time not less than fourteen days nor more than —— calr months after such determinon], to take down & remove for their own benefit all [fixed &] moveable engines, machy, plant, &c., *here insert appropriate words*, used or employed in or about the sd mines & works [wch the lessor shl not have elected to pchase under the provon hinafter contd] (except landlord's fixtures) making reasble compenson for all damage done to the sd lands & premes by such removal.

Power to lessor to purchase engines, &c., at expiration of term.

VII. PROVD ALWAYS, &c., that if at the expiron or sooner determinon of the sd term the lessor shl desire to pchase all or any of the [fixed or] moveable engines, machy, plant, &c., *here insert appropriate words*, & other articles & things used or employed in or about the carrying on & workg of the mines & works hby demised, & shl signify such desire by a notice in writg, signed by him or his agent, & given to the lessees, or left at the countg-house of the sd mines, one

calr month at least bfe the expiron or sooner determinon of the sd term, unless the same shl be determined under the power of re-entry hinbfe contd, in wch case the notice may be given or left as afsd at any time within fourteen days after the determinon of the sd term, then & in such case the articles & things specified in such notice shl not be removed by the lessees, but shl be pchased by the lessor, at a price to be determined in case of dispute by arbitron. *See Prec. II.*, p. 911.

VIII. PROVD ALWAYS, &c., that if & so often as any pt of the rents, royalties, or dues hby reserved or made payable to the lessor, shl be in arrear for twenty-one days, whether the same shl have been legally demanded or not, the lessor may enter into & upon any of the mines, lands, works, & premes hby demised (*b*) [or any adjoing mines, lands, or works wch shl for the time being be held or occupied by the lessees in connon with the sd mines & premes (*c*)], & may seize & distrain all [coal] & other minls actually gotten, & all fixed or moveable engines, machy, rails, trams, plant, horses, cattle, implemts, utensils, & things belonging to the lessees, within, under, or upon any of the sd mines & premes

Power of distress (*a*).

(*a*) Although mining leases are excepted out of s. 6 of the Bills of Sale Act, 1878 (enacting that an attornment clause or power of distress given as security for a debt is to be deemed to be a bill of sale), there is no such exception in s. 4, under which "a licence to take possession of personal chattels as security for any debt," is to be so deemed. Whatever the effect of the exception of mining leases in s. 6 may be, it is not clear that the power of distress in the text (although for rent), is not within s. 4, having regard to *Pulbrook* v. *Ashby*, 56 L. J. Q. B. 376, 35 W. R. 779 (see above, p. 816; note), so as to be invalidated by the Act of 1882, so far as it goes beyond the Common Law power. In this uncertainty as to the law it is thought better to retain the clause, which is of frequent occurrence in mining leases.

As to whether power of distress in mining leases is within Bills of Sale Acts.

(*b*) If the lease is in the form of licences only, in lieu of "hby demised," say, "wch shl for the time being be held or occupied by the lessees, under the liberties or licences hby grted."

Variation for licences.

(*c*) See as to this power of distress when the lease has been assigned *Daniel* v. *Stepney*, L. R. 9 Ex. 185.

so demised [held or occupied] as afsd, & may sell & dispose of the same for & towards the satisfon & paymt of all such arrears of rent, royalties, or dues, & also of all expses incidental to, or occasd by such distress or distresses in like mner as landlords may distrain on goods by law distrainable for rent reserved by common demises.

Addition to power of distress.

IX. And in case any such distress shl not produce an amt of moy sufft to cover the amt so in arrear & the expses afsd, may stop all works & operons wch may be carried on in or upon the sd demised premes, until the rent, wch shl then remain due, & all expses occasd by non-paymt thof, shl be satisfied: Provd always that the express powers of entry & distress hinbfe contd shl be in addon to & not in lieu of any power of distress to wch the lessor may be by law entled for recovery of the rents hby reserved.

Provision as to notices (*a*).

X. And it is hby agrd that every notice hby required or authorised to be given to the lessor shl be in writg, & may be eir given to him psonally, or left at his usual or last known place of abode in the United Kingdom, or may be given to his agent, or such other pson, & in such mner as the lessor may from time to time direct; & every notice hby required or authorised to be given to the lessees shl be in writg, & may be eir given to them or any of them psonally, or to the ppal manager or captain of the sd mines or works, or may be left at the usual or last known place of abode in the United Kingdom of the lessees, or any of them, or at the office or countg-house of the sd mines or works.

The same. Short form referring to the Conv. Act, 1881.

XI. And it is hby agrd that any notice hby required or authorised to be given to the lessor or lessees resply, shl be in writg, & may be given or served in any of the modes provd by the 67th section of the Conveg & Law of Ppty Act, 1881, with respt to notices to be given to lessors or lessees (as the case may be) under that Act.

(*a*) See *Hogg* v. *Brooks*, 14 Q. B. D. 475. Where the lessor is a company, the notice may be given to the secretary or left at the registered office of the company; where the lessees are a company, the notice may be given in like manner or in any of the other modes mentioned in the text which are applicable.

XII. PROVD ALWAYS that the clause lastly hinbfe contd shl not in any mner abridge any of the rts or powers hinbfe given to the lessor or his agent or enable any mre to be submitted to arbitron, wch, under the provons hinbfe contd, wd be subjt to the absolute control of the lessor or his agent, or as to wch the rt to go to arbitron is hinbfe excluded. Addition to arbitration clause (*b*).

PRECEDENTS.

I.

AGREEMENT *for* LEASE *of a* COAL MINE (*c*).

PREC. I.

AGRMT made this —— day of ——, BETN A., of, &c. (hinafter called the lessor), of the one pt, & B., of, &c., & C., of, &c. (hinafter called the lessees), of the other pt. Parties.

1. [IN CONSON of the sum of £—— to be pd to the lessor by the lessees] the lessor shl grt & the lessees shl take a lease & exte a counterpt thof, OF THE unworked coal in the —— seam of coal & all the seams of coal existg below the sd —— seam of coal lying within & under the lands situate, &c., & called, &c., & estimated to contain —— acres or thrabouts parlarly descd in the schdle hto & coloured —— in the plan hrunto annexed, TOGR WITH all the existg plant & machy (in the nature of landlord's fixtures) attached to the colliery. Agreement for lease. Parcels.

2. THE LESSEES, their agents & workmen, shl have power for the purpose of winning, workg, manufacturg, & carrying away the minls hby agrd to be demised to enter upon that pt of the surface of the sd lands wch is coloured —— upon the sd plan but not upon any other portion thof witht the written consent of the lessor or his agent. Power to lessees to enter.

(*b*) For arbitration clause, see above, p. 771.

(*c*) See p. 779, note; and see the Coal Mines Regulation Act, 1887.

PREC. I.

Lessees' powers.

THE LESSEES shl have the follg powers over the lands coloured —— on the sd plan [so far as the lessor has the power to grt the same under a lease dated, &c., & made, &c., under wch he holds the sd premes].

3. *Liberty to make works*, p. 872.

To deposit rubbish and use water.

4. LIBERTY TO deposit rubbish produced in workg & manufacturg the demised minls, & to make watercourses & ponds & to divert & use the flowg water (so far as the lessor can authorise the same), but the rt to make watercourses & ponds is grted subjt to the embankmts & puddlg being made pperly to the satisfon of the lessor or his agent, & kept in repair to prevent the water from overflowg, percolatg, or orwise injurg the adjacent lands.

To take building stone and make bricks.

5. LIBERTY TO take bldg stone from such pt of the sd land as shl be approved in writg by the lessor or his agent, & to erect brick-works & to manufacture fireclay into bricks [such stone & bricks to be used exclusively on the sd demised premes].

To build houses.

6. LIBERTY to erect upon the land coloured —— dwellg-houses for workmen or agents accdg to plans & on sites to be approved in writg by the lessor or his agent.

Way-leave.

7. A RT of way to carry minls from the adjoing mines over or under any pt of the demised premes or over any pt of the surface of the lands coloured —— on the sd plan.

Liberty of instroke and out-stroke.

8. LIBERTY OF instroke & outstroke into & from the demised mines & premes from & to any adjoing mines for carryg minls from such adjoing mines through the demised mines & premes as afsd, or for workg the demised mines from such adjoing mines, but so that no instroke or out-stroke drift made through the barriers hinafter covted to be left in the boundaries of the demised mines shl exceed —— in width, & no drift shl be nearer than —— yards to any other drift.

Powers to be subject to existing rights.

9. THE POWERS afsd over the surface are to be grted subjt to any rts or powers wch may have been previously acquired by any existg lessees or other psons under any existg leases or agrmts.

10. THERE SHL be reserved to the lessor all minls & substces not hby specifically agrd to be demised, with full powers of winng, workg, manufacturg, & carryg away such excepted minls & substces, & for that ppose to use the lessees' pits, rlwys, tramways, & roads, payg reasble compenson for the use of the same, the amt thof in case of diffce to be settled by arbitron. PREC. 1. Reservation of minerals to lessor.

11. ALSO POWER to the lessor & his tenants to pass with or witht horses, cattle, carts, & carriages over & along all or any of the roads now existg or to be made by the lessees on the sd demised premes. Reservation of right of way.

12. ALSO POWER to the lessor to take & use from time to time for any ppose, witht makg compenson, any portion or portions of the lands coloured —— on the sd plan wch shl not have been appropriated by the lessees as hby authorised. Reservation of right to resume lands.

13. THE TERM shl be —— yrs from the —— day of ——. Term.

14. THE CERTAIN rent shl be £——, for wch sum the lessees may work such quantities of minls as at the royalties after mentd will be eql to the same, & the term "short workgs" hinafter contd means workgs short of such quantities, & the term "excess" or "surplus workgs" means workgs in excess of such quantities. Rent.

15. THE ROYALTIES shl be as follows— Royalties.

Large coal —— per ton.
Small coal —— ,,
Ironstone —— ,,
Fireclay —— ,,
Bldg stone —— per yard.

The ton to consist of —— pounds & all coal to be considered & taken as large coal wch will not on being screened pass through a screen of bars wch are [one] inch apt or wch shl be sold unscreened.

16. NO ROYALTY shl be pd for coal actually consumed by pumpg, windg, & ventilatg engines, ventilatg furnaces, & pit fires used for workg the demised minls, provd the quantity consumed does not exceed —— p. c. of the total amt raised from the demised premes. No royalty for coal consumed.

PREC. I.

No royalty for stone or bricks used.

17. No ROYALTY shl be pd for bldg stone or fireclay made into bricks wch shl resply be used upon the premes.

Way-leave rent.

18. A WAY-LEAVE rent of —— per ton shl be pd for minls conveyed from adjoing ppties over or under the demised premes or over the surface of the lands coloured —— on the sd plan.

Surface rent and compensation to tenants.

19. THE LESSEES shl pay at the rate of —— per acre by way of rent for any quantity up to —— acres of the surface lands wch shl be taken, & at the rate of —— per acre for all such lands taken in excess of —— acres, & shl pay for crops, plantations, & timber upon any land taken at the time of takg posson thof; AND SHL also pay all compenson payable to the tenants, & at the end or other sooner determinon of the lease shl make compenson for all permanent damage to the surface.

Rent for land taken for houses.

20. THE LESSEES shl pay at the rate of —— per acre by way of rent for such pts of the surface-land coloured —— on the sd plan as shl be taken for the ppose of erectg dwellg-houses thron.

Time for payment of rents and royalties.

21. THE SD rents & royalties shl be payable half-yrly on the —— day of —— & the —— day of ——.

Liberty to make up short workings.

22. THE LESSEES shl be at liberty to make up the short workgs of any yr out of the excess of any of the next succeedg —— yrs only, but the surplus workgs of any past yr shl in no case be taken to make up the short workgs of any subseqt yr.

No merger of way-leave rent.

23. WAY-LEAVE RENT shl not merge in the certain rent.

Lessees' covenants.

THE LEASE or leases shl contain the follg covts by the lessees in the terms now usually inserted in leases of similar ppty in the coy of ——, that is to say :

To pay rent.

24. TO PAY rents & royalties.

To pay rates.

25. TO PAY rates & taxes.

To give notice before taking land.

26. NOT TO take any of the surface-land coloured —— on the sd plan witht givg one month's notice to the lessor or his agent, each notice to be accompanied by a plan upon wch the land proposed to be taken shl be shewn.

To fence.

27. TO FENCE off all land on takg posson.

28. To COMMENCE sinking from the surface —— pits to the —— seam within —— calr months from the commencemt of the term on the land coloured —— on the sd plan, one pit to be not less than —— feet in diameter in the clear & the other not less than —— feet in diameter in the clear, in such situon as may be approved of by the lessor or his agent, & such sinkg to be pursued with pper diligce & dispatch & uninterruptedly & with at least —— able workmen constantly employed except in case of strikes or genl lockouts or unavoidable accidents. PREC. I. To sink pits.

29. To SUPPLY to the lessor or his agent from time to time when required, accurate sections of the strata wch may be passed through in sinkg the pits to be sunk on the demised premes, & to supply parlars of all their explorons. To supply plans of explorations.

30. NOT TO erect or use any steam engine, coke-oven, brick-kiln, or any work or machine whatever, in wch coal or coke shl be burned or any kind of fire used, within fifty yards of the fence of any land from time to time taken posson of, & all land taken to be forthwith cleared & aftwds kept cleared of the underwood, gorse, & long grass, with a view to avoid risk of fire to the adjoing lands, & to pay for injury occasd by fire or orwise to any land, & the crops & plantations thron, wch shl not have been taken by the lessees as hby authorised. Not to light fires near boundary, and to pay for damage by fire.

31. To ERECT weighg machines, & to weigh the minls got, & to allow the lessor's agent to be psnt at the weighg. To weigh minerals.

32. To KEEP separate accts of the workgs from each of the seams, & to supply copies thof to the lessor or his agent. To keep and deliver accounts of workings.

33. To KEEP plans to a scale of —— chains to an inch. To keep plans.

34. NOT TO assn or underlet witht the consent of the lessor. Not to assign.

35. To LEAVE barriers if required by the lessor or his agent of —— yards in width in each of the demised seams adjoing the outside boundary of the demised premes. To leave barriers.

36. To STOP up effectually every instroke or outstroke drift at the end or other sooner determinon of the term if To stop instroke and out-

PREC. I.

required by pper frame dams or orwise to the satisfon of the lessor or his agent.

stroke drifts.

37. To KEEP the works in repair.

To repair.

38. To DELIVER up the works & mines in good repair & workg order & pperly drained & ventilated to the satisfon of the lessor or his agent at the end or other sooner determinon of the sd term.

To deliver up.

Not to work under buildings.

39. NOT TO work under or within —— yards of any bldgs now built or hinafter to be built [for agricultural pposes or with the consent of the lessees] upon the demised premes.

To work mines properly.

40. To WORK the mines pperly & accdg to the most approved method of workg for the time being in use in the coy of ——; & to observe the Coal Mines Regulon Act, 1887.

Not to injure mines.

41. NOT WILFULLY to do anything to injure the mines.

Not to allow water to accumulate.

42. NOT TO allow any water to accumulate in the workgs of any of the demised seams, & in the event of any water so accumulatg, to exte when required such works as may be necy to remove such accumulons, so as to prevent the loss of any coal wch ought fairly to be worked.

To supply lessor with coal (*a*).

43. To SUPPLY the lessor or his agent, from & after the winning of the coal, with one ton of large coal per week free of cost at the pit's mouth, the same not to be chgeable with royalty.

Lessees' powers.

THE LEASE or leases shl contain the follg powers to the lessees in the terms now usually inserted in leases of similar ppty in the coy of ——:

To surrender if unsuccessful.

44. To SURRENDER the demised premes if the workg is unsuccessful.

To remove plant on determination.

45. To REMOVE the plant at the end or other sooner determinon of the sd term if the lessor shl not elect to pchase the same.

Lessor's powers.

THE LEASE or leases shl contain the follg powers to the

(*a*) *Qu.* whether this subjects the lease to extra stamp duty under the Act of 1891, s. 76.

lessor in the terms now usually inserted in leases of similar ppty in the coy of —— :

To re-enter.

46. To RE-ENTER if any rent or royalty is in arrear for —— days, or on breach of any of the covts, or if the lessees or their assns shl, while the sd demised premes or any pt thof shl remain vested in them, become bkpt or enter into any arrangemt or composon with their creditors, or being a Co, shl enter into liquidon whether compulsory or voluntary.

To distrain (*b*).

[47. To SUSPEND the works & to distrain upon the engines, plant, & stock in hand, if any of the rents or royalties are in arrear for —— days.]

To purchase plant.

48. To PCHASE the lessees' plant at a valuon on givg to them six calr months notice bfe the expiron or other sooner determinon of the term, or in the event of the same being determined by re-entry then on giving such notice within fourteen days thrafter.

To enter during last year of term.

49. To ENTER upon the premes durg the last yr of the lessees' occupon for the ppose of doing any act necy or useful for the future workg of the mines.

To examine.

50. To EXAMINE the mines & premes at all times.

To weigh.

51. To WEIGH the minls & to examine & copy the lessees' plans & accts.

To have assistance.

52. FOR THE pposes afsd or any of them to have the assistce of miners, workmen, & others in the employmt of the lessees, & the use of the machy & plant free of chge.

Lessor to covenant for quiet enjoyment.

53. THE LESSOR shl covt in the usual way for the lessees' quiet enjoymt.

Lease to contain arbitration clause.

54. THE LEASE or leases shl contain the usual arbitron clause, & such other clauses in addon to those hinbfe mentd, & not being inconsistent thrwith, as are now usually inserted in leases of similar ppty in the coy of ——.

Preparation of lease and costs.

55. THE LEASE or leases & counterpt of each lease shl be prepared by the solor of the lessor at the expse of the lessees, & the lessees shl pay all expses attendg this agrmt.

Lessor's

56. UNTIL THE lease or leases shl have been grted, the

(*b*) See p. 901, note.

PREC. I.

lessor shl have the same powers & remedies by distress (*a*) & orwise in case of non-paymt of rent & royalties, & all other powers & rts as if the lease or leases had been exted.

powers before grant of lease.

57. THE LESSOR'S title shl not be inquired into.

Lessor's title not to be inquired into.

58. ANY QUESTION arisg out of this agrmt shl be settled by arbitron in the usual mner.

Arbitration.

59. *Add any other clauses from the forms given above wch may be appropriate.* IN WITS, &c.

Schdle of Pcels.

II.

PREC. II.

LEASE *of* IRON *and* METALLIC MINE *in* DEVONSHIRE *effected by Grant of* LICENCES ONLY.

PARTIES, A. (hinafter called the lessor, wch expression, &c., *see* p. 734), 1; B. & C. (hinafter called the lessees, wch expression, &c.), 2. WITNETH that in conson of the rents & reservons hinafter reserved, & of the covts & agrmts by the lessees hinafter contd, the lessor doth hby grt & demise unto the lessees, *exclusive liberty to get*, "iron, iron-ore, umber, & other ores, metals, & minls," p. 871; *to make works*, p. 872; *to use water*, p. 874: AND THE iron, iron-ore, umber, & all other ores, metals, & minls to be found & gotten by virtue of these psnts to take, raise, make merchantable, carry away, & dispose of at their will & pleasure, TO HOLD the sd licences, powers & authorities hby grted UNTO the lessees from the —— day of ——, for the term of —— yrs, *Reservon of fixed rent*, p. 878, *witht the words in brackets; also a yrly royalty* "for every ton of twenty-one cwt. of iron, iron-ore, or umber," p. 879; AND ALSO renderg & deliverg on the sd premes one —— pt or share of all such tin, tin-ore, copper, copper-ore, lead, lead-

Witnesseth.

Demise.

Parcels.

Habendum.

To lessees.

Reservation of rent.

Render in kind.

(*a*) See p. 901, note.

ore, & all other metals & minls, except iron, iron-ore, & umber, raised or got, *continue form for render in kind or moy at lessor's option*, p. 880 : *average clause*, p. 883 : *Covts by lessees* "for themselves & their assns," *to pay the rents & royalties*, p. 883 ; *to pay rates & taxes*, p. 883 ; *to weigh minls*, p. 892 ; *to allow lessor to inspect weighg-machines*, p. 892 ; *to allow lessor's agent to be psnt at the weighg*, p. 892 ; *not to make any unnecy shafts*, p. 889 ; *to fence pits*, p. 888 ; *not to work near bldgs, &c.*, p. 891 ; *to allow lessor to inspect*, "all or any adits, shafts, or works, wch shl be driven, sunk, made, or used within the sd lands," p. 894 ; *to preserve surface mould*, p. 892 ; *not to cause damage*, p. 896 : *Power to lessor to pchase engines at end of term*, p. 900 : And in case the lessor shl not elect to take such engines, machy, apparatus, materials, & effects at a valuon as afsd, then that the lessees will not remove the same, or any pt thof, from the sd lands until all the shafts wch shl have been opened or made by the lessees shl have been filled in, or pperly covered or secd, & all rents, royalties, dues, & compenson then due from them shl have been pd accdg to the covts hinbfe contd, after wch the lessees shl be at liberty durg —— calr months thrafter to remove the same : *Power of re-entry*, p. 898 ; [*power of distress*, p. 901] ; *covt by lessor for quiet enjoymt*, p. 897 ; *arbitron clause*, p. 771, *with the addon at* p. 903. *Add any other clauses from the above forms wch may be appropriate.* In wits, &c.

PREC. II.

Lessees' covenants.

Not to remove plant before filling up pits, &c.

III.

LEASE *of* Slate Quarries *in* Wales (*b*).

PREC. III.

Parties, A., *lessor*, hinafter, &c., *see* p. 734, 1 ; B. & C., *lessees*, hinafter, &c., 2 : WITNETH, *conson, demise of* "All those pces of land situate, &c., & also" *the slate*

Demise.

(*b*) As to fencing, see 50 & 51 Vict. c. 19.

PREC. III.

Liberty to quarry.

To dig pits, &c.

To divert shafts, &c.

Alter roads, &c.

Put up machinery.

Pull down houses.

Make drains.

Get stone and clay.

Right of way.

quarries, p. 872, TOGR WITH full power, licence, & authority, to open, dig, sink, search for, work, raise, & get all slate or slate-rocks of every kind in, from, or out of the lands & hds afsd, & for that ppose to remove & take away any surface soil, & to dig, sink, & drive any new pits, shafts, soughs, levels, trenches, dams, embankmts, drains, & watercourses in or about the sd quarries or works: AND TO have, use, alter & divert the pits, shafts, soughs, levels, trenches, dams, embankmts, drains, & watercourses now existg, or hrafter to be opened, or made, in, under or upon the sd lands & hds, or any pt thof: AND TO make new, & to use, stop up, alter, & divert the psnt & any new tramways & other roads, inclined planes, levels, drifts, & works in or upon the sd lands & hds, or any pt thof: AND TO make, build, & erect upon any pt of the sd lands & hds any engines, machines, wheels, pumps, mills, & bldgs whatsr: AND TO alter & pull down any house or bldg now standg, or hrafter to be erected on the sd lands [witht any liability or obligon to rebuild the same], for the better or more effectually gettg, dressg, makg merchantable, & carrying away such slate as afsd, or for workg or carrying on any works or quarries hby authorised to be made or worked: AND WITH full rt to cut & make drains, gutters, pits, & trenches for keepg & conveyg water for such engines, machines, wheels, pumps, mills, & other necy uses in & about the sd works or quarries: AND ALSO to dig & get, in, upon, or out of the sd lands & hds, such stone, clay, & other materials, as may be necy or requisite for makg, repairg, & maintaing any works, bldgs, tramways, waterways, or other things now existg, or hrafter erected, or made in connon with the sd quarries: [WITH free rt of passage for the lessees, their servants, agents, & workmen, with horses, carts, carriages, or orwise in, upon, & over all roads, ways, levels, & drifts for the time being upon or under any other lands of the lessor not hinbfe demised, for carrying away the sd slates, & for carrying & bringing any materials & things whatsr to or from the sd quarries.] *Reservon to lessor of liberty*

to enter & inspect works, p. 877: To HOLD, use, exercise, & enjoy the sd lands, hds, slate rocks, quarries, works, powers, & premes hinbfe demised & grted, subjt to the respive estes & intts of the sevl tenants of the same lands & hds, UNTO the lessees from the —— day of —— for the term of twenty-one yrs: *Reservon of certn rent*, p. 878; *& royalty* "of —— for every ton (consistg of —— lbs.) of slate (except rough flags), of a size exceedg 100 superficial inches, wch shl be got & made durg the sd term," p. 879: AND ALSO PAYING thrfor durg the sd term a royalty of —— for every ton (to be calculated as afsd) of rough flags & lintels & slate of a size not exceedg 100 superficial inches, wch shl be got & made durg the sd term: PROVD ALWAYS, & it is hby agrd & decld that the qtrly paymt of £——, made on any qtr day in respt of the sd certn yrly rent of £ ——, shl be taken in pt paymt, so far as the same shl extend, of the sd royalties of —— & —— per ton, accrued due in the qtr wch shl immedly precede such qtrly day. *Average clause*, p. 883. *Corts by lessees* "for themselves & their assns" *to pay rents & royalties*, p. 883; *to pay rates*, p. 883: AND WILL keep true & pper books of acct of all slates, slate-rocks, slate-flags & blocks, wch shl be gotten & made in the sd works, & will fairly & openly weigh all such slates, slate-rocks, slate-flags, & blocks, as shl be sent for shipment or transit by rly or orwise sent off the sd lands & hds, & keep the sd books of acct at the office or countg-house of the sd works: AND WILL permit the lessor & his agents at all reasble times durg the first fourteen days of every qtr of a yr of the sd term to inspect such books of acct & parlars: AND ALSO that the lessees will psonally, or by their agents or managers, whenever required, verify the accuracy of the sd books of acct & parlars: AND ALSO will at all times durg the sd term use & work in every respt the sd lands, rocks, quarries, & beds of slate, & make, manufacture, & work all the slate of every description raised or got out of the sd quarries of pper sorts, sizes, thicknesses, & dimensions in every respt accdg to the best

PREC. III. Habendum. To lessees. Reservation of rent. Royalty for large slates. Royalty for small slates. Certain rent to be in part payment of royalties. Lessees' covenants. To keep accounts, &c., and permit lessor to inspect them, and verify them. To work quarries properly.

PREC. III. & most improved method for the time being in use in the district of carrying on & workg slate quarries, & makg & manufacturg slates: AND WILL effectually prosecute & continue such works, & keep the sd quarries free & clear from all rubbish: AND WILL remove the rubbish, waste, & surface-soil from time to time, & deposit the same in some convenient & reasble pt of the sd demised premes, wch the lessor, or his agent, shl approve for that ppose, so as such deposit shl not injure the sd quarries, or impede the future workg thof; *to keep works in repair, & deliver up at end of term*, p. 887; *to allow lessor to enter & inspect*, "the sd rocks, quarries, & beds of slate & works," p. 894; *to make compenson for surface damage*, p. 884; *power of re-entry*, p. 898; [*power of distress over* "all slates, slate-rocks, blocks, flags, machy, engines, implemts, plant, horses, carts, live & dead stock, & all other effects whatsr then & there found, whether such engines, machy, or other effects may be affixed to the sd lands or not," p. 901.] *Covt by lessor for quiet enjoymt*, p. 897. *Arbitron clause*, p. 771, *with the addon at* p. 903. *Add any other clauses from the above forms wch may be appropriate.* IN WITS, &c.

To prosecute works

To remove rubbish.

Power of distress.

IV.

PREC. IV. LEASE *of a* COAL MINE, *the* CLAUSES *being placed in* SCHEDULES.

PARTIES, A., *lessor* (hinafter called the lessor, wch expression shl hinafter & in the schdl hto, &c., *see* p. 734), 1; B. & C., *lessees* (hinafter, &c.), 2. WITNETH that in conson of the rents & royalties hinafter reserved & the covts on the pt of the lessees & condons hinafter contd, the lessor doth hby grt & demise unto the lessees, ALL THOSE mines, beds, veins, & seams of coal & fireclay, liberties, licences, & privileges mentd & desed in the first pt of the

Witnesseth.

Demise.

Parcels.

schdle hrunder written, EXCEPT & RESERVED unto the lessor, as in the second pt of the sd schdle is mentd, To HOLD the premes hby grted & demised UNTO the lessees, from the —— day of —— for the term of —— yrs, Paying thrfor the sevl rents & royalties mentd & specified in the third pt of the sd schdle, SUBJT to the provons relatg to the sd rents & royalties expd in the fourth pt of the sd schdle: *Covts by the lessees with the lessor*, p. 744, as in the fifth pt of the sd schdle is expd. *Covt by the lessor with the lessees*, p. 760, as in the sixth pt of the sd schdle is expd: AND IT IS HBY AGRD & decld in mner expd in the seventh pt of the sd schdle: AND IT IS HBY ALSO AGRD & decld that the sd schdle hrunder written shl be deemed to be pt of these psnts & be read & construed accdly. IN WITS, &c.

PREC. IV.

Reservations.

Habendum.

Rents.

Provisions as to rents.

Lessees' covenants.

Lessor's covenants.

Provisoes.

Proviso that schedule shall be read as part of lease.

The Schdle refd to in the above written indre (*a*).

Schedule.

The first pt.

Peels, p. 871; *liberty to work mines*, p. 872; *to sink pits & make works*, p. 872; *with provo as to surface operons slightly altered*, p. 875; [*if necy, liberty of instroke & outstroke*, pp. 874, 875; *to quarry*, p. 873; *to use water*, p. 874;] *lessees not to obstruct lessor's ming operons*, p. 875; *or to do unnecy damage*, p. 875.

Parcels.

The second pt.

So MUCH & such pts of the sd mines, beds, veins, & seams hby demised as is or are required for the support of any house on bldg now on the demised lands, *or*, "on the lands hinbfe descd & distinguished by a —— colour on the sd map:" *& also excepted minls with liberties for workg the same*, p. 876; *to use tramways*, p. 877; *lessor to join in repairg tramways*, p. 877; *liberty to lessor to enter & inspect mines*, p. 877; *provo that the lessor shl not hinder the lessees*, p. 878.

Reservations.

(*a*) It will be convenient to paragraph the clauses in the Schedule.

PREC. IV.

The third pt.

Rents. *Fixed rent, with the words in brackets,* p. 878; *surface rent,* p. 878; *galeage rents per ton of coal & fireclay,* p. 879; [*way-leave rent,* p. 880; *spoil bank rent,* p. 880.]

The fourth pt.

Provisions as to rents. ALL THE afsd rents shl be pd free from any dedon except landlord's ppty tax: *Provo that a certn quantity of coal may be got witht paying royalty,* p. 881; *provo as to accidents,* p. 882; *strike clause,* p. 882; *average clause,* p. 883.

The fifth pt.

Lessee's covenants. *To pay rents,* p. 883; *to pay rates & taxes,* p. 883; *to pay compenson for surface damage,* p. 884; *to work mines effectually,* p. 884; *not to discontinue workg,* p. 886; *to sink pits,* p. 907; *or, to exte other special works, see* p. 886; *to protect mines from encroachmt,* p. 887; *to fence pits,* p. 888; *to fill in or fence useless shafts,* p. 889; *not to interfere with roads or streams,* p. 889; *not to work near bldgs,* p. 891; *to weigh coals, &c.,* p. 892; *with, if thought necy, the subsidiary clauses, forms* xxxii., xxxiii., xxxiv., xxxv.; *to keep plans of mines,* p. 894; *to deliver accts half-yrly,* p. 893; *inspon of accts by lessor,* p. 894; *to mark boundaries of mine,* p. 894; *to allow lessor to inspect workgs,* p. 894; *not to obstruct lessor in workg excepted minls,* p. 896; [*not to allow unauthorised psons to use way-leaves,* p. 896; *not to assn,* p. 757; *with the provo;*] *to keep works in repair & deliver up at end of term,* p. 887; *to observe the Coal Mines Regulon Act,* 1887, p. 896.

The sixth pt.

Lessor's covenants. *For quiet enjoymt,* p. 897.

The seventh pt.

Provisoes. *Power of re-entry,* p. 898; [*power of distress,* p. 901]; [*power to lessees to determine lease, if coal lies too deep,*

p. 899; *or if coal is of bad quality or exhausted*, p. 899.] PREC. IV.
Power to lessor to pchase engines at expiron of term, p. 900; *arbitron clause*, p. 771; *with the addon*, p. 903; *provon as to notices*, p. 902; *add any other clauses from the above forms wch may be appropriate.*

V.

LEASE *of* SERPENTINE ROCK *in* CORNWALL. PREC. V.

Parties, A. (hinafter called the lessor, &c., *see* p. 734), 1; B. & C. (hinafter called the lessees, &c.), 2: WITNETH Witnesseth. that in conson of the rents & royalties hinafter reserved & the covts on the pt of the lessees hinafter contd, the lessor doth hby grt & demise unto the lessees, *liberty to get*, "all Demise. the steatite, soapstone, porphyry, granite, marble, olivine, Liberties. asbestos, & diallage stone & rock," p. 872, *liberty to make & construct*, "adits, shafts, pits, & a jetty, pier, quay, or break-water, sheds, houses, engines, & other bldgs, tramways, & roads," p. 873: EXCEPTG & RESERVG unto the lessor all Reservation of timber, trees, wood, & underwood, & all copper, copper ore, timber and lead, lead ore, tin, tin ore, & all other metals, minls, & minerals, stone whatsr, other than the sd stone & rock hinbfe demised: AND EXCEPTG & RESERVG all quarries of slate, & pits & veins and quarries. of clay & marl whatsr, with liberty for the lessor, &c., p. 876, *form* II.; *to use tramways, &c.*, p. 877; *lessor to join in repairg tramways*, p. 877; *liberty for lessor to enter & inspect mines*, p. 877: *Provo that lessor shl not hinder lessees*, p. 878; *Habendum*, p. 740; *Reservon of fixed rent*, p. 878; *royalty*, p. 879. *Covts by lessees*, "for themselves & their assns," *to pay rents*, p. 883; *to pay rates*, p. 883; *not to discontinue workg*, p. 886; *to pay compenson for surface damage*, p. 884; *to keep works in repair*, p. 887; *to fence pits*, p. 888; *not to interfere with roads or streams*, p. 889; AND ALSO will lay aside for the use of the lessor, all meat To preserve earth & soil wch shl be dug by the lessees, & will not meat earth.

PREC. V.

within twelve months aftwds, lay any stones or rubbish thron ; *to keep accts*, p. 893 ; *deliver accts half-yrly*, p. 893 ; *to allow lessor to inspect accts*, p. 894 ; *& to inspect workgs*, p. 894 ; *not to obstruct lessor in workg excepted minls*, p. 896.

To allow lessor to use jetty.

AND FURTHER that if the lessees shl erect a jetty, pier, quay, or breakwater, by virtue of the liberty or licence hinbfe contd, they shl allow the lessor & his tenants to use the same for all pposes wch shl not interfere with the works of or with the user of the same by the lessees, upon such terms as to the paymt for or mode of enjoymt of the same as shl be agrd upon by the lessor & lessees, or in default of agrmt shl be determined by arbitron ; *to deliver up at end of term*, p. 896 ; *power of re-entry*, p. 898 ; [*power of distress*, p. 901]. *Covt by lessor for quiet enjoymt*, p. 897 ; *arbitron clause*, p. 771, *with the addon*, p. 903 : *add any other clauses from the above forms wch may be appropriate.* IN WITS, &c.

VI.

PREC. VI.

LEASE *of a* BRICKFIELD.

PARTIES, A., *lessor*, hinafter, &c., *see* p. 734, 1 ; B. & C., *lessees*, hinafter, &c., 2. WITNETH that in conson of the rents, royalties, covts, & condons hinafter reserved & contd, & by the lessees to be pd, pformed, & observed, the lessor doth hby grt & demise unto the lessees, ALL THOSE pces of land situate, &c., AND ALSO liberty to get clay, brick earth, & sand, & other materials to be used in the manufacture of bricks [or tiles] from the sd lands, & to manufacture the same into bricks [or tiles] on any pt (*a*) of the sd land, & to sell & dispose of the bricks [or tiles] so manufactured, *liberty to use*

Witnesseth.

Demise.

(*a*) If the brickfield is near buildings some restrictions as to the position of clamps, kilns, and ash heaps may be required. The nature of the tiles, whether roofing or draining tiles, and the dimensions, must be stated.

water, p. 874, AND ALSO liberty to erect, construct, & maintain such engines, machy, kilns, clamps, ovens, workshops, bldgs [cottages], erons, & things, & to form such roads, communicons, ash heaps, spoil banks, & other convenices on & over the sd lands as may be necy or convenient. [*Genl reservon of mines & minls*, "other than the clay, brick earth, sand, & other substces hby demised," p. 876]; *liberty to lessor to enter & inspect works*, p. 877, *form* VII., *saying*, "the sd demised premes," & "the quantity of clay, brick earth, & sand actually got, & the no. of bricks [& tiles] in course of manufacture or ready for sale," *& omittg the clause beginng* "for the pposes afsd," TO HOLD, use, & enjoy the sd premes hby grted & demised UNTO the lessees from the —— day of ——, for the term of 21 yrs, *Reservon of dead rent*, p. 878, *form* I., *saying*, "may manufacture durg the half-yr, &c., —— bricks [& —— tiles]." AND also a royalty to be pd on the days hinbfe mentd of —— for every thousand bricks manufactured on the demised premes in excess of —— thousand durg the half-yr immedly precedg such paymt, & of —— for every thousand tiles manufactured, &c., PROVD always that no royalty shl be pd in respt of any bricks or tiles used in the eron, constron, or maintnce of any of the kilns, clamps, ovens, workshops, bldgs, cottages, erons, water-courses, culverts, drains, or things hby authorised (*b*). *Covts by the lessees* "for themselves & their assns," *to pay rent & royalties*, p. 883; *to pay rates & taxes*, p. 883, *saying* "the demised premes or the clay, brick earth, sand, & other materials got thfrom, or the proceeds, &c., *to fence* "the demised premes," p. 888, *to prevent poachg*, p. 891, [*not to place clamps, &c., except in certn places*, p. 891, *form* XXVI, *mutatis mutandis* (*c*)]. AND ALSO that the lessees

PREC. VI.

Habendum.

Reddendum.

Proviso.

Lessees' covenants.

Clamps, &c.

To preserve surface soil.

(*b*) Sometimes an *average clause*, see p. 883, is inserted: but it appears to be inappropriate. If it is inserted *a covt to work effectually*, p. 884, *mutatis mutandis*, should be inserted.

(*c*) It may be desirable to provide (i.) that the clay shall be worked from, say, E. to W.; (ii.) that the full depth shall be worked before new

PREC. VI.

will lay aside & preserve the two topmost spits of soil from any pt of the premes where they may dig clay or sand, & will as soon as the clay, brick earth, or sand shl have been taken replace the sd two spits of soil & restore the surface so as to be fit for agricultural pposes, AND WILL not carry away from the demised premes any clay, brick earth, sand, or other substces obtd under the liberties afsd, but will manufacture the same on the demised premes & not elsewhere into bricks [or tiles], And will at all times keep at the office on the demised premes accurate accts showg the no. of bricks [& tiles] manufactured on the demised premes, & of the sales thof, & of the terms, &c., *continue to keep accts*, p. 893, *mutatis mutandis*, *to allow the lessor to inspect accts*, p. 894, *mutatis mutandis*. AND also that the lessor & his agents shl be at liberty at all times durg the sd term to enter upon & inspect the demised premes; AND ALSO will durg the sd term indemnify & keep indemnified the lessor agst all actions, claims, damages, & expses wch may be instituted or occasd in respt of the storage of ashes or other materials, or the manufacture of bricks [or tiles] on the demised premes or any annoyce or damage wch may be thby occasd to the neighbourhood. *To deliver up at end of term*, saying, "with all kilns, clamps, erons, & bldgs," *Power of re-entry*, p. 898. [*Power of distress*, p. 901, saying, "all clay, brick earth, sand, & other materials actually gotten, & all bricks [& tiles] partially or completely manufactured, & all fixed, &c."] *Covt by the lessor for quiet enjoymt*, p. 897; *Power to lessees to remove*, "all bricks [& tiles] completely manufactured & being on the sd premes," p. 900, *form* VI, *mutatis mutandis*. PROVD THAT if the lessees shl at any time be restrained by legal pcdgs from makg or burng bricks upon the land hby demised or any pt thof or shl be mulcted in damages for such makg or burng, then & in eir of the sd cases the lessees may give notice in writg to the lessor to

Not to carry away clay, &c.

To keep accounts.

To allow inspection by lessor.

To indemnify lessor against actions, &c.

Power to determine lease.

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ground is broken; (iii.) that it shall be worked in accordance with sections and levels annexed to the lease, or to be fixed from time to time by the landlord or his agent.

forthwith determine this lease, & the same shl be determined accdly subjt to the paymt of all rents & royalties, & the pformce & observce of all the covts hrin contd, & by the lessees to be pformed or observed up to the time of such determinon: *arbitron clause*, p. 771, *with the addon*, p. 903. In wits, &c. PREC. VI.

VII.

AGREEMENT *for* Yearly Tenancy *of a* Brickfield. *A short form* (*a*). PREC. VII.

Parties, A., hinafter, &c., *see* p. 734, 1; B. & C., hinafter, &c., 2.

1. The lessor hby demises to the lessees as yrly tenants from the —— day of ——, All that field, situate, &c., With liberty to the lessees to get clay & sand thfrom, & to manufacture the same into bricks on any pt of the premes, & to erect such kilns, [clamps], sheds, or huts, as may be necy for such ppose. Demise. Parcels. Right to get clay and make bricks.

2. The rent shl be a certn rent of £——, payable half-yrly on the —— day of ——, & —— day of ——, & a royalty of —— per 1000 bricks to be pd on the days afsd on all bricks made on the premes durg the half-yr precedg each such paymt. Reservation of rent.

3. *Lessees not to discontinue workg*, *see* p. 886.

4. The lessees shl at their own expse keep the road from the sd field to the turnpike road from —— to —— in repair & good condon. Lessees to repair road.

5. *To preserve surface mould, & not to carry away clay or sand, as in last precedent*, p. 920.

6. Eir pty may determine this agrmt by giving one calr month's notice in writg to the other, expirg on the —— day of —— in any yr.

(*a*) See last Precedent and notes thereto.

PREC. VII.

7. IF THIS agrmt shl be determined by the lessor by notice expirg bfe the —— day of ——, he shl pay for all kilns [clamps], sheds, & huts erected by the lessees on the sd field at a valuon made by two psons, one to be appted by each pty, or an umpire in the usual mner, but in the event of the determinon of this agrmt in any other mner, the sd kilns [clamps], sheds, & huts shl belong to the lessor witht his makg any paymt for the same.

8. *Power of re-entry*, p. 898, *saying*, "may re-enter upon the premes, & put an end, &c." AS WITS, &c.

VIII.

PREC. VIII.

AGREEMENT *for letting from* YEAR *to* YEAR *a* QUARRY *of* BUILDING *and* ROAD STONE. *A short form* (*a*).

Parties.

AGRMT made, &c., BETN A., (hinafter, &c., *see* p. 734), 1; B., (hinafter, &c.), 2.

Licence to quarry.

1. IT SHL be lful for the lessee to enter upon the —— farm, situate, &c., & to quarry stone from the quarry now open thron or from any fresh pits wch he may open adjacent thto, from the —— day of —— from yr to yr till this licence is determined, AT the royalties follg, namely —— per yard for all road stone & —— per yard for all bldg stone removed from the sd land.

From year to year.

Royalty.

Royalties to be calculated and paid quarterly.

2. THE AMTS of the royalties due shl be calculated up to each of the usual qtr days, & shl be pd within one calr month after the same.

Power of distress (*b*).

[3. THE LESSOR shl have a rt of distress for the royalties upon all the stone wch shl for the time being remain on the sd land & upon the lessee's plant.]

(*a*) As to fencing, see 50 & 51 Vict. c. 19.

(*b*) See p. 901, note.

4. No new pit shl be opened witht the lessor's written consent.

No new pit to be opened.

5. The lessee shl work the existg pit & any addonal pit or pits wch shl have been opened by him continuously & vigorously except in case of a genl strike or lock-out of workmen or other unavoidable interruption, & shl at his own expse keep the roads on the sd farm in good order & condon, but so that he shl not pay any royalty on the stone used for that ppose, & shl keep the quarry & any new pits wch he may open pperly fenced (*c*) so as to prevent accidents, & fill in any pit as soon as it is exhausted, & replace the mould so as to render it as fit as circes will admit for agricultural pposes.

Lessee to work continuously.

6. Eir the lessor or the lessee may at any time give notice to the other of them to determine this agrmt, & thrupon the licence to quarry stone shl cease except that the lessee shl have the rt to exhaust any pit then actually open, & the terms of this agrmt shl in such case continue in force until the whole of the stone then raised or to be raised from any open pit shl have been sold & the royalties pd & until the lessee shl have in all respts complied with article 5 of this agrmt.

Power to determine agreement by notice.

7. If the lessee shl neglect to pay the rent or royalties for twenty-one days, whether legally demanded or not, or if he shl assn or underlet the premes [or if he shl become bkpt, or enter into an arrangemt or composon with his creditors,] the lessor may by notice in writg given to the lessee or left for him at the sd quarry put an end to this agrmt. In wits, &c.

Power of re-entry.

(*c*) See 50 & 51 Vict. c. 19.

LEASES (MISCELLANEOUS FORMS).

Lease by joint tenants (*a*).

I. *Parties*, A. & B., *lessors*, hinafter called the lessors, wch expression shl include their hrs & assns, where the context so admits, 1; C., *lessee*, hinafter called the lessee, wch expression shl include his exs, ads, & assns, where the context, &c., 2: Witneth, *conson, &c.*, the lessors do hby demise, &c., *pcels, habendum, reddendum*, to the lessors, *covts by the lessee with* the lessors, *using that expression throughout: Power for*, the lessors, *to re-enter:* And the lessors do hby for themselves, their hrs, exs, ads, & assns (*b*) covt, &c., *to insure, &c., & for quiet enjoymt*, witht interruption by the lessors, or any pson claimg under them or eir of them; *power to lessee to determine lease on giving notice*, to the lessors or eir of them, or leavg such notice at their or his respive usual or last-known place of abode.

Lease by tenants in common.

II. *Parties*, A., B., & C., hinafter called the lessors, wch expression shl include their respive hrs & assns, where the context so admits, 1; D., hinafter called the lessee, wch expression, &c., *as in form* I., 2: Witneth, *conson, &c.*, the lessors, accdg to their respive estes & intts, do resply hby demise, &c., *pcels, habendum, reddendum* [to the lessors, accdg to their respive estes & intts, *or omittg these words*]; *covts by the lessee with*, the lessors, & also separately with

(*a*) The first 24 of these forms are intended merely to indicate the variations in each case from the common form of lease by an owner in fee to one lessee. As to using an interpretation clause, see p. 734, note. The variations for an underlease are given in the precedent of an underlease, p. 793.

(*b*) See note, p. 760.

each & every of them; *power to*, the lessors, or any of them, *to re-enter:* AND THE lessors do hby for themselves resply & their respive hrs, exs, ads, & assns (*c*), covt, &c., *to insure, &c., & for quiet enjoymt*, witht interruption by the lessors, or any of them, or by any pson or psons claimg through or under them or any of them; *power to lessee to determine lease on givg notice*, to the lessors or any of them, or leavg such notice at their or his respive usual or last-known place of abode.

Lease to joint tenants.

III. *PARTIES*, A., hinafter called the lessor, wch expression, &c., 1; B. & C., hinafter called the lessees, wch expression shl include their exs, ads, & assns, where the context so admits, 2: WITNETH, *conson*, the lessor doth hby demise unto the lessees, *pcels*, *habendum*, to the lessees, *reddendum:* AND THE lessees do hby for themselves, their exs, ads, & assns (*d*), covt, &c., that they the lessees, *using that expression throughout; provo for re-entry on non-paymt of rent or breach of covt by*, the lessees, [or if the lessees shl become bkpt, &c.]; *covt by lessor with*, the lessees, *to insure, & for quiet enjoymt by*, the lessees.

Lease to tenants in common.

IV. *PARTIES*, A., hinafter called the lessor, wch expression, &c., 1; B. & C., hinafter called the lessees, wch expression shl include their respive exs, ads, & assns, where the context so admits, 2: WITNETH, *conson*, the lessor doth hby demise unto the lessees, *pcels*, *habendum*, to the lessees as tenants in common, *reddendum:* AND THE lessees do hby for themselves, their hrs, exs, ads, & assns, & as a separate covt each of them doth hby for himself & his hrs, exs, ads, & assns (*d*),

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(*c*) See note, p. 760.

As to covenants by several lessees.

(*d*) The lessees' covenants in leases to joint tenants are often in practice, although the beneficial interest survives, made joint and several, as in leases to tenants in common, see the next form. In any case the covenant should be worded so as to make the intention clear; as to the construction put upon covenants in this respect, see *Burns* v. *Bryan*, 12 App. Cas. 184, where in a Scotch lease to joint tenants the covenant was held to be joint and several; *White* v. *Tyndall*, 13 App. Cas. 263, where conversely in a lease to tenants in common, the covenant was held to be joint only; Elph. N. & C. Interp. Deeds, p. 434.

covt, &c., that they, the lessees, *using that expression throughout, provo for re-entry on non-paymt of rent, or breach of covt by,* the lessees [or if the lessees shl become bkpt, &c.]; *covt by lessor,* with the lessees, & also separately with each of them, *to insure, &c., & for quiet enjoymt by,* the lessees.

Lease by limited company.

v. *Parties,* The —— Co, Limd., hinafter called the Co, wch expression shl include their assns where the context, &c., 1; B., hinafter called the lessee, wch expression, &c., 2. *This will be in the form for a lease by jt tenants, form* I., p. 924, *using throughout the expression,* the Co, *except that notices by the lessee may be given,* to the Co, or left at their registered office.

Lease to limited company.

vi. *Parties,* A., hinafter called the lessor, wch expression, &c., 1; The —— Co, Limd, hinafter called the Co, wch expression shl include their assns where the context, &c., 2. *This will be in the form for a lease to jt tenants, form* III., p. 925, *using throughout the expression,* the Co, *except that the provo for re-entry will, if so intd, include the case,* if the Co shl enter into liquidon, whether compulsory or voluntary (*a*), or if their assns, not being a Co, shl become bkpt or enter into any arrangemt or composon, whether under any bkptcy act or orwise, with their or his creditors.

Lease under power by trustees having legal estate.

Variation where tenant for life joins to consent and covenant (*c*).

vii. *Parties,* A., B., & C., *trees,* hinafter called the lessor, wch expression shl include their hrs (*b*) & assns where the context so admits, 1; [*D., tenant for life,* 2]; E., *lessee,* hinafter, &c., 3: Witneth, *conson,* the lessors, *refce if thought fit to power* [& with the consent hby testified of the sd D.] do hby demise, &c., *pcels, habendum, reddendum,* to the lessors, *using that expression throughout: power for,* the lessors, *to re-enter:* And the lessors do hby for themselves,

(*a*) As to the rights of the lessor on the company going into liquidation, see *Gooch* v. *London Banking Association,* 32 Ch. D. 41.

(*b*) The word "hrs" is conceived to be right notwithstanding s. 30 of the Conv. Act, 1881, vesting trust estates in the personal representatives.

As to consent of tenant for life.

(*c*) If the powers of the Settled Land Act, 1882, are applicable (see p. 772, note), the consent of the tenant for life, or person having the powers of a tenant for life under the Act, would be necessary under s. 56

their hrs, exs, ads, & assns (*d*), covt, &c., *to insure, &c., & for quiet enjoymt* [*or substitute covt by D. for quiet enjoymt* (*e*)]; *power to lessee to determine lease as in lease by jt tenants.*

Lease under a power by trustees having no estate, the tenant for life consenting (*f*).

VIII. *Parties*, A., B., & C., *trees*, hinafter called the lessors, wch expression shl include the psons or pson for the time being entled to the revon of the hds hby demised, expectant on the term hby grted (*g*), where the context so admits, 1; D., *tenant for life*, 2; E., *lessee*, hinafter called the lessee, wch expression, &c., 3. Witneth, *conson*, the lessors, *refce if thought fit to power*, & with the consent (hby

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to the exercise by the trustees of a leasing power (except in the case of a settlement by way of trust for sale, see the Act of 1884, ss. 6 and 7). This is a reason for granting the lease under the Act, and not under the power in the settlement. As to the case of the tenant for life, &c., being an infant or lunatic, see ss. 60, 62; *qy.* whether this is affected by the Lunacy Act, 1890, 53 Vict. c. 5, s. 120 (*h*). As to what is the "best rent" in farming leases granted under powers, see the Agricultural Holdings Act, 1883, s. 43, above, p. 835, note; and in leases for artizans' dwellings, see 53 & 54 Vict. c. 70, s. 74. As to what are proper covenants in a lease under a power, see *Davies* v. *Davies*, 38 Ch. D. 499.

(*d*) See p. 760, note. The following provisions may be added here if desired to protect the trustees from personal liability under the covenants (other than for quiet enjoyment) after parting with the estate:—"to the intent to bind the revon of the sd demised premes expectant on the terms hby grted & the psons or pson from time to time entled thto so far as they lfully can or may but not so as to render themselves resply psonally liable in damages for any breach of the covts hinafter contd except in respt of the acts & defaults of themselves resply & their own respive hrs, exs, & ads." Reference may be made to the Agricultural Holdings Act, 1883, s. 31, protecting trustees from personal liability for the payment of compensation to outgoing tenants.

Restriction of personal liability of trustees.

(*e*) Any merely personal covenant, such as that for quiet enjoyment, may be entered into by the tenant for life; but as, in this case, he is not "the lessor," it is doubtful whether the obligation of any of his covenants could be made to run with the reversion, see the Conv. Act, 1881, s. 11.

(*f*) See p. 926, note (*c*).

(*g*) *Or*, "shl include the psons or pson for the time being entled to rece the rents hby reserved;" see p. 735, note.

testified) of the sd D., do hby [appt (*a*) &] demise, &c., *pcels, habendum, reddendum genlly, Covts by lessee with,* the lessors, *using that expression throughout. Power for,* the lessors, *to re-enter:* And the lessors do hby for themselves, their hrs, exs, ads, & assns (*b*), covt, &c., *to insure, &c., & for quiet enjoymt,* witht interruption by the lessors, or any pson claimg under them or any of them. *Power to lessee to determine lease on givg notice,* to the lessors or any of them, or leavg the same at their or his usual or last known place of abode.

Lease by tenant for life under a power in a settlement or will (*c*).

IX. *Parties,* A., *tenant for life,* hinafter called the lessor, wch expression shl, &c., *as in last form,* 1; B., *lessee,* hinafter called the lessee, wch expression, &c., 2. Witneth, *conson,* the lessor, *refce if thought fit to power,* doth hby [appt (*a*) &] demise, &c., *pcels, habendum, reddendum genlly, covts by lessee with,* the lessor, *using that expression throughout; power for,* the lessor, *to re-enter:* And the lessor doth hby for himself, his hrs, exs, ads, & assns (*b*), covt, &c., *to insure, &c., & for quiet enjoymt,* witht interruption by the lessor or any pson claimg under or in trust for him, or under the sd indre of settlemt, *or,* "will" (*d*): *Power to lessee to determine lease on givg notice,* to the lessor, or leavg the same at his usual or last known place of abode.

Lease by tenant for life, or other limi-

X. *Parties,* A., *tenant for life, or other limd owner,* hinafter called the lessor, wch expression, &c., *as in form* VIII., 1; [B., C., & D., *trees,* 2;] E., *lessee,* hinafter called the

(*a*) The word "appt," though appropriate, where the lease operates under the Statute of Uses, is not necessary.

(*b*) See p. 760, note.

Power of tenant for life to lease to trustee for himself.

(*c*) Under an ordinary power a tenant for life may lease to a trustee for himself, *Lord Cardigan* v. *Montague,* 2 Sug. Pow. 7th ed., App. p. 551; *Wilson* v. *Sewell,* 4 Burr. 1979; *Bevan* v. *Habgood,* 1 J. & H. 222; but it is conceived that this does not hold good in the case of a lease under the Settled Land Act, 1882, having regard to s. 53, expressly placing the tenant for life in the position of a trustee. Section 12 of the Settled Land Act, 1890, providing for a difficulty of this kind in relation to sales, &c., does not apply to leases.

(*d*) If the instrument is not mentioned before say, "an indenture dated, &c., and expressed, &c.," or "the will dated, &c., of the late X., of, &c."

lessee, wch expression, &c., 3 : WITNETH, *conson* [*if a fine is taken it will be pd to the trees*], the lessor by virtue of the ted owner, under the Settled Land Acts (*e*).

(*e*) As to the general provisions of the Settled Land Acts, see above, p. 501, note. The Act of 1882 authorises (ss. 6 and 7), leases of the settled "land" (as defined by s. 2), or any easement or right over it, "whether involving waste or not" (which seems to exclude the application of *Davies* v. *Davies*, 38 Ch. D. 499, as to exempting the tenant from liability for permissive waste), as to occupation or farming leases for 21 years, as to building leases for 99 years and as to mining leases for 60 years, to take effect in possession within 12 months, at the best rent, regard being had to any fine taken or money laid out on the land, or other circumstances; and subject to other usual restrictions, the conditions of re-entry to be on non-payment of the rent for not exceeding 30 days. Any statement in or indorsed on the lease signed by the lessor as to any matter of fact or calculation in relation thereto is in favour of the lessee to be sufficient evidence; this would no doubt apply to a statement that the rent is the best. As to the rent in a mining lease varying with the price of the minerals got, see the Act of 1890, s. 8. As to what is the best rent in a farming lease or for artizans' dwellings, see above, p. 926, note (*c*). As to the special powers and requirements in the case of building leases see ss. 8 and 16 (above, p. 802, note, and p. 804, note), and the Amendment Act of 1889 (as to giving an option of purchase); and in the case of mining leases, see ss. 9 and 17; as to the power of the Court to authorise building or mining leases for longer terms or on other conditions, see s. 10; as to leases pursuant to a contract by a predecessor in title (see as to this before the act, *Davis* v. *Harford*, 22 Ch. D. 128), or a covenant of renewal, or for confirming a previous lease, see s. 12; as to a lease on the surrender of a prior lease, see s. 13; as to copyholds, see s. 14; as to undivided shares, s. 19; as to the exception of mansion-houses and land occupied therewith, see the Act of 1890, s. 10; and as to the power to grant easements affecting the mansion, see *Sutherland* v. *Sutherland*, 37 Sol. J. 618. As to the insertion of a covenant for renewal, see above, p. 763, note. By the Amendment Act of 1884, s. 4, fines are to be deemed capital money (but as to a lunatic tenant for life, see the Lunacy Act, 1890, s. 123 (2)), so as to be payable (under s. 22 of the original Act) to the trustees, who should therefore in that case be parties, or else sign an endorsed receipt. As to the power to enter into and vary, &c., contracts for leases, see s. 31; and as to the power to execute deeds for effectuating leases, see s. 20. Leases not exceeding three years may be under hand only, Act of 1890, s. 7 (iii.). The statutory power will be especially useful in the case of a settlement of leaseholds, as the tenant for life may, under s. 20, grant a legal lease without the concurrence of the trustees, although the legal estate is in them; which could not have been done under the old law, leaseholds not being within the Statute of Uses.

Leasing powers under Settled Land Acts.

As to the statutory notice required to be given to the trustees of the intention to grant the lease under the Act of 1882, s. 45, as modified by As to notice to trustees.

powers of the Settled Land Acts, 1882 to 1890 (*a*), & of every or any other power enablg him in this behalf doth hby demise, &c. *The rest of the form will be the same as the last.*

Lease of freeholds held in undivided shares, some being in settlement.

XI. *Parties*, A., B., C., D., &c., *owners or donees of statutory or express leasg powers*, hinafter called the lessors, wch expression, &c., *as in form* VIII., 1; E., *lessee*, hinafter, &c., 2. Witneth, *conson*, the lessors by virtue of their sevl & respive estes & intts or statutory or other powers do resply hby grt, appt, & demise, *pcels*, *habendum*, *reddendum genlly*, *covts by lessee with*, the lessors, & also separately with each & every of them, *power for*, the lessors, *to re-enter*, & the lessors do hby for themselves, & their respive hrs, exs, ads, & assns, jtly & sevly covt, &c., *to insure, &c., & for quiet enjoymt*, witht interruption by the lessors or any of them or any pson claimg under or in trust for them, or any of them: *Power to lessee to determine lease on givg notice*, to the lessors or any of them, or leavg the same at their or his usual or last known place of abode.

Lease by a husband of his wife's freeholds under the Settled

XII. *Parties*, A., *husbd*, hinafter called the lessor, wch expression shl include the pson or psons for the time being entled to rece the rent hby reserved, where the context so admits, 1; B., *lessee*, hinafter, &c., 2: Witneth, *conson*,

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the Act of 1884, s. 5, see p. 510, note; but in the case of rack-rent leases not exceeding 21 years, where the lessee is not made dispunishable for waste, the necessity for notice is dispensed with by the Act of 1890, s. 7 (i.). In *Mogridge* v. *Clapp*, [1892] 3 Ch. 382, a lessee without notice and dealing in good faith was held to be protected notwithstanding the want of notice, and the fact that there were no trustees to whom it could have been given.

As to what are proper covenants in leases under powers, see *Davies* v. *Davies*, 38 Ch. 499.

Defective execution of leasing powers.

Reference may here be made to the Acts (12 & 13 Vict. c. 26, 13 & 14 Vict. c. 17, see 3 Dav. Prec. 517), relieving against defective execution of powers of leasing, which would, as it seems clear, apply to leases under the Settled Land Acts; see Farwell on Powers, p. 345, *Sutherland* v. *Sutherland*, *ubi supra*.

(*a*) The Act does not require that the lease should refer to it (*Mogridge* v. *Clapp*, *ubi supra*), but it is desirable that the intention that it should operate under the Act should be expressed. This form may be used *mutatis mutandis* for a lease under any other Act.

demise by A., pcels, habendum to lessee for any term not exceeding twenty-one yrs in posson; reddendum genlly; covts by lessee with, the lessor, *using that expression throughout: Power to,* the lessor, *to re-enter if the rent is in arrear for not exceedg twenty-eight days, or on breach of covt; Covts by,* the lessor, *to insure, &c., & for quiet enjoymt,* witht interruption by the sd A. or C., his wife, or eir of them, or any pson claimg under them or eir of them: *Power to lessee to determine lease on givg notice to,* the lessor. Estates Act, 1877, s. 46 (*b*).

XIII. *Parties,* A., & B., his wife, *lessors,* hinafter called the lessors, wch expression, &c., *as in last form,* 1; C., *lessee,* hinafter, &c., 2: Witneth, *conson,* the lessors, by virtue of the powers of the Settled Land Acts, 1882 to 1890, & of every or any other power enablg them or eir of them in this behalf do, & each of them doth hby demise, &c., *pcels, habendum, reddendum genlly, covts by lessee with,* the lessors, & also separately with each of them; *power to,* the lessors, *to re-enter:* And the lessors do hby for themselves resply & their respive hrs, exs, ads, & assns (& as to the sd B. to the intent to bind all separate este & ppty wch she has power so to bind) covt with the lessee, *to insure, &c., & for quiet enjoymt,* witht interruption by the lessors or eir of them, or any pson claimg under them or eir of them. *Power to lessee to determine lease on givg notice to,* the lessors or eir of them. Lease by husband and wife of the wife's settled estate under the Settled Land Act, 1882, s. 61 (*c*).

XIV. *Parties,* A., *lessor,* hinafter called the lessor, wch expression, &c., 1; B., the wife of C., of &c., hinafter called the lessee, wch expression, &c., 2. Witneth, *conson, if a* Lease to a married woman as her separate estate (*d*).

(*b*) This form can only be required for a woman married before 1st January, 1883, and as to property her title to which accrued before that date. In any other case a married woman can now grant leases by virtue of the Married Women's Property Act, 1882 (see p. 773, note), as owner (if she is absolutely entitled), or under the Settled Land Act, 1882, s. 61 (2), if the estate is settled. As to what are proper covenants, see *Davies* v. *Davies,* 38 Ch. D. 499. Married women.

(*c*) See p. 511, note. Where the wife is entitled for her separate use, or as a *feme sole* (under the Married Women's Property Act, 1882), she will grant the lease under s. 61 (2), without her husband, according to form x., p. 928.

(*d*) Before the Married Women's Property Act, 1882, in order to avoid Lease to a

premium is pd, say, "of the sum of £—— now pd to the lessor by the lessee out of moys formg pt of her separate este," *& of rents & covts, demise,* unto the lessee, *pcels, reservons, habendum,* to the lessee as her separate este: *Covts by the lessee* (to the intent, &c., *as in last form*), *& power of re-entry, & covts by the lessor & other clauses, all in the usual form.*

Lease by guardian of an infant under a power or the Conv. Act, 1881, s. 41 (*a*).

XV. *Parties,* A., of &c., the gdian of X., a minor under the age of twenty-one yrs, who is entld in fee simple, *or,* "for a leasehd intt at a rent," to the hds hby demised, & who is hinafter called the revoner, wch expression shl include the pson or psons for the time being entled to the revon of the sd premes hby demised, expectant on the term hby grted, where the context so admits, 1; B., *lessee,* hinafter, &c., 2. Witneth, *conson,* the sd A. by virtue of [the Conveg & Law of Ppty Act, 1881, &] every or any power enablg him doth hby demise, *pcels, reservon of mines, &c., to,* the revoner. *The rest of the lease will follow the standard form, using the words,* "revoner" & "lessee" *throughout, except that the covt for quiet enjoymt will be by A.,* witht interruption by the sd A. or the revoner, &c., *any other lessor's covts such as to repair, will be by A.,* on behalf of, & so as to bind the revoner, that the revoner will, &c. *Power to lessee to determine lease on notice to,* the revoner.

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married woman.

the difficulties arising from the granting of a lease direct to the wife (inasmuch as her covenants were at law a nullity, and the burden of them could not run with the land), the proper way was to grant the lease to the husband, or some other person as trustee, who entered into the covenants; but as every married woman is by that Act, s. 1, enabled to acquire, hold, and dispose of property, and to contract, and to sue and be sued, as a *feme sole,* it seems that the lease may now always be granted to her without the intervention of a trustee, and her covenants will be enforceable against her by action without joining her husband, to the extent of her separate estate; and that the obligation of them will run with the land at law (see *Sutherland* v. *Sutherland,* 37 Sol. J. 618). The case where the husband is the lessor may be an exception, as it is not clear that he can lease (unless under a power operating under the Statute of Uses, or a statutory power), direct to his wife (see above, p. 668, note, *Sutherland* v. *Sutherland, ubi sup.*); and in that case it may be better to interpose a trustee.

(*a*) See p. 773, note.

Lease by trustees on behalf of infant under Settled Land Acts (*b*).

XVI. *Parties*, A. & B., *trees*, actg on behalf of X., a minor under the age of twenty-one yrs, who is tenant for life [*or*, a pson havg the powers of a tenant for life under the Settled Land Acts, 1882 to 1890] of the hds hby demised, &c., *as in form* XV., 1; C., *lessee*, hinafter, &c., 2. Witneth, *conson*, the sd A., & B., on behalf of the sd infant by virtue of the powers of the Settled Land Acts, 1882 to 1890, & of every or any other power enablg them do hby demise, &c., *as in form* XV.

Lease by mortgagor and mortgagees (*c*).

XVII. *Parties*, A. & B., *mtgees*, hinafter called the lessors, wch expression shl include the psons or pson for the time being entled to rece the rent hby reserved (*d*), where the context so admits, 1; C., *mtgor*, 2; D., *lessee*, hinafter called the lessee, wch expression, &c., 3: Witneth, *conson*, the lessors, at the reqt of the sd C. (*e*), do hby demise, &

(*b*) See ss. 59, 60, and above, p. 511, note, and p. 773, note.

Leases by mortgagor and mortgagee.

(*c*) See also Precedents XVIII., p. 822, and XIX., p. 826. Where the mortgage is since 1881, the mortgagor or mortgagee, when respectively in possession, is enabled by the Conv. Act, 1881, s. 18 (if not excluded by the mortgage deed), to grant ordinary occupation or building leases, reserving the best rent without fine; so that the concurrence of both in the mortgage will now often be unnecessary. Even before the Act ordinary rack-rent leases were often granted by the mortgagor alone, such leases being valid as between the parties to them, and not likely to be disputed by the mortgagee; but as no tenancy was created between the tenant and the mortgagee, the latter could not require payment of the rent to him; *Towerson* v. *Jackson*, [1891] 2 Q. B. 484.

As to frame of leases by mortgagor and mortgagee.

(*d*) This form of interpretation clause is better than that defining "lessors" as including the reversioners for the time being, since the mortgagor (though not the legal reversioner) while in possession and receipt of the rents is the proper person to give licenses and consents and to give and receive notices and exercise generally the functions of a landlord: and it enables the ordinary clauses to be used with little if any alteration; this is aided by the Judicature Act, 1873, s. 25 (5), and the Conv. Act, 1881, s. 10; see *Municipal, &c., Society* v. *Smith*, 22 Q. B. D. 70; the clause at the end of the form is added to make the matter clearer.

As to the exclusion of the covenant implied by the word "demise."

(*e*) If the mortgagees do not enter into any covenant for quiet enjoyment, the words "but not so as to imply any warranty or covt," should be inserted here so as to exclude any implied warranty or covenant arising from the word "demise." See Elph. N. & C., Interp.

the sd C. doth hby demise & confirm unto the lessee, *pcels, habendum, reddendum genlly; covts by lessee,* with the lessors, & also separately with the sd C., his hrs & assns [*covt by lessor to insure* (*a*)]: And each of them the lessors resply, & the sd C., so far as relates to his own acts & deeds, & the acts & deeds of psons claimg under him, doth hby covt, &c., *for quiet enjoymt,* witht interruption by the lessors & the sd C. or any of them, their or any of their hrs, exs, or ads, or any pson claimg under them or any of them: *Provo for re-entry: Power to lessee to determine lease on givg notice,* to the lessors or any of them: Provd always, &c., that until the sd A. & B., their hrs or assns shl require paymt of the sd rent to them & give to the lessee or leave upon the sd demised premes notice in writg requirg such paymt, the sd rent shl be pd to the sd C., his hrs or assns, whose rect shl be a sufft dischge for the same: Provd also, &c., that any license, consent, or act hinbfe required or authorised or wch may be necy to be given or done by the lessors hrunder may be validly & effectually given or done by the psons or pson for the time being entled to rece & give a dischge for the sd rent, & any notice required to be given by or to the lessors hrunder shl be valid & sufft, if given by or to the psons or pson so entled.

Lease by mortgagor and two sets of mortgagees (*b*).

XVIII. *Parties,* A. & B., *first mtgees,* hinafter called the lessors, wch expression, &c., *as in the last form,* 1; C. & D., *second mtgees,* 2; E., *mtgor,* 3; F., *lessee,* hinafter called the lessee, &c., 4: Witneth, *conson,* the lessors & the sd C. & D., at the reqt of the sd E., accdg to their respive estes & intts, do resply hby demise, & the sd E. doth hby demise & confirm unto the lessee, *pcels, habendum, reddendum genlly: covts by lessee with,* the lessors, & also separately with the sd C. & D., their hrs & assns, & also separately with the

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Deeds, 442, 424. As to trustees and mortgagees covenanting for quiet enjoyment, see p. 762, note.

(*a*) The liability of the mortgagees under this covenant might be limited as in the case of trustees, see p. 762, note.

(*b*) See notes to last form.

sd E., his hrs & assns. AND EACH of them the lessors & the sd C., D., & E., so far as relates to his own acts & deeds & the acts & deeds of all psons claimg under him, doth hby, &c., *covt for quiet enjoymt,* witht interruption by the lessors, or the sd C., D., & E., or any of them, their or any of their hrs, exs, ads, or assns, or any pson claimg under them or any of them. *Provo for re-entry: Power to lessee to determine lease on givg notice to,* the lessors, or any of them. *Provo,* that until the sd A. & B., their hrs & assns, shl require paymt of the sd rent to them, &c., *as in the last form,* the sd rent shl be pd to the sd C. & D., their hrs & assns, in case they shl have given or left such a notice for paymt thof to them, & if not, then to the sd E., his hrs & assns, & that the rect of the pson or psons to whom the sd rent shl for the time being be payable under the provons lastly hinbfe contd shl be a good dischge for the same. Further provo that any license, consent, &c., *as at end of last form.*

Lease by a mortgagor under a power in the mortgage, or the Conv. Act, 1881, s. 18 (*c*).

XIX. *PARTIES,* A., *mtgor,* hinafter called the lessor, wch expression, &c., *as in form* XVII., 1; B., *lessee,* hinafter, &c., 2: WITNETH, *conson,* the lessor by virtue of [the Conveg & Law of Ppty Act, 1881 (*d*), &] every power enablg him in this behalf doth hby demise, *pcels, habendum, reddendum genlly, covts by,* lessee, *with,* lessor, *power for,* lessor, *to re-enter, covts by,* lessor, *to insure, &c., & for quiet enjoymt. Power to lessee to determine lease on givg notice to,* lessor.

Lease by parson under Ecclesiastical Leasing Acts (*e*).

XX. *PARTIES,* A., *parson,* hinafter called the lessor, wch expression shl include his succors & assns, unless, &c., 1; *Ecclesiastical Commrs,* 2; B., patron of the sd rectory, 3;

(*c*) See p. 775, note; p. 933, note. As regards leases under the Conv. Act, 1881, s. 18, although the lessor has not the legal reversion, the lease will operate as if the mortgagee had joined in it, and the covenants will run with the land; see *Municipal, &c., Society* v. *Smith,* 22 Q. B. D. 70. That the mortgagor may lease to a trustee for himself, see *Bevan* v. *Habgood,* 1 J. & H. 222.

(*d*) The reference to the Act is not necessary; and, if it is desired not to disclose the fact that the property is in mortgage, will be omitted.

(*e*) See p. 774, note.

C., *lessee*, hinafter, &c., 4; *conson*, the lessor by virtue of the powers & provons contd in the Ecclesiastical Leasg Acts, & of all other powers him enablg with the consent & approval of the sd Ecclesiastical Commrs for England, & with the consent of the sd B., as such patron as afsd testified by their resply being pties to & executg these psnts doth hby demise unto the lessee, *pcels*, formg pt of the glebe lands of or belonging to the sd rectory of ——, *habendum*, *reddendum*, *covts by lessee*, with the lessor, & also by way of separate covt with the sd Ecclesiastical Commrs, their succors & assns, *covt by lessor*, for himself & his succors, *restrictg his psonal liability, as in form*, p. 927, *note*, *for quiet enjoymt. Provo*, that as betn the sd Ecclesiastical Commrs & any incumbent of the sd rectory it shl not be compulsory on the sd Commrs psonally to take pcdgs to enforce the observce of any of the covts on the pt of the lessee hinbfe contd, but that it shl be entirely discretionary with them to take such pcdgs or not as they may think pper.

Lease by two partners in a firm to the remaining partner in trust for the firm (*a*).

XXI. *Parties*, A. & B., two of the ptners in the firm of ——, hinafter called the lessors, wch expression, &c., 1; C., the remaing ptner in the sd firm, hinafter called the lessee, wch expression, &c., 2: Witneth, *conson*, the lessors do hby demise unto the lessee, *pcels*, *habendum*, *reddendum*, *usual lessee's covts*, [*And not to* assn, underlet, or pt with the

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Case of one of lessors being also lessee.

(*a*) Under the Conv. Act, 1881, s. 50 (and s. 2, making the word "convey" include "lease"), a lease of freeholds might be granted by one or more persons to himself or themselves jointly with another or others; but neither under this enactment (which does not apply to leaseholds), nor under 22 & 23 Vict. 35, s. 21 (which applies to leaseholds, but only to assignments), can an underlease be so granted. Even in the case of freeholds the lease in this form should be avoided, to prevent questions as to the operation of the covenants and the lessor's remedies; the proper course is to grant it to a trustee (see the Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 20 (2)), as in the above form; the trust being declared in the lease itself, or, if it is desired that the interest of the firm should not appear on the title, by a separate deed, as in the following form; the trustees would, of course, have the right of indemnity without express declaration:—

Deed poll

"To all to whom these psnts shl come, A. & B. of the

posson of the sd premes, or any pt thof, or permit the same to be used or occupied by any pson or psons whomsr, except the sd firm of ——, *witht licence,* & that the sd premes shl not at any time durg the sd term, witht such licence as afsd, be used for any business, trade, or ppose other than the business of —— now carried on by the sd firm]: *Power of re-entry on non-paymt of rent or breach of covt,* [or in case the sd ptnp firm of ——, or their assns for the time being, benefly entled to these psnts shl become bkpt, or enter into any arrangemt or composon with their credors under the provons of any bkptcy act or orwise, or suffer the sd premes, or any pt thof, to be taken in exon.] *Covt by lessors for quiet enjoymt. Power to the lessee,* with the consent or concurrce of the sd ptnp firm of ——, or the psons or pson for the time being benefly entled to these psnts, *to determine the lease on givg six months' notice.* Provd always, &c., that the lessee shl stand possed of the sd premes hby demised in trust for the sd ptnp firm of ——, & their assns, & permit the sd firm & their assns to occupy & enjoy the sd premes as pt of their ptnp este, or orwise, accdg to their benefl este & intt thrin [subjt & witht prejudice to the covt or condon hinbfe contd agst assnmt, underlettg, or partg with the posson of the sd premes witht the licence of the lessors as afsd], & that the lessee shl at all times hrafter be kept fully indemnified, reimbursed, & saved harmless by the sd ptnp

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firm of —— send greetg [*Recite lease of even date from C. & D. to A. & B.*], And whas the sd A., B., C., & D. carry on in co-ptnp togr the business of —— under the style of —— & Co., & the sd lease was grted by the sd C. & D. to the sd A. & B. for the benefit of the sd ptnp firm, & the names of the sd A. & B. were used thrin as trees for the sd firm: Now these psnts wits that the sd A. & B. do hby declare that they & their exs, ads, & assns, shl stand possed of the premes comprd in the sd lease of even date hwith in trust for the sd ptnp firm of —— & Co., as pt of the capital & este thof."

by lessees declaring that the lease was granted in trust for a partnership firm consisting of themselves and the lessors.

In wits, &c.

firm, or their assns, agst all costs, damages, expses, & losses in respt of the sd rents hby reserved, & the covts, agrmts, & condons hrin contd, & all actions, pcdgs, & liabilities in respt thof.

Lease by trustees under a power with sanction of Court to a trustee for one of their number (*a*).

XXII. *Parties*, A., B., & C., *trees*, hinafter called the lessors, wch expression, &c., 1; D., *lessee*, hinafter, &c., 2; the sd C., 3: Witneth, that in consn of the rents & covts on the pt of the lessee & the sd C., hinafter reserved & contd, the lessors, by virtue of the powers contd in the will & codl dated, &c., of Y., deced, & of every or any power enablg them in this behalf & in psuance of an order of Mr. Justice ——, dated, &c., made on a summons in the mre of the trusts of the sd will & codl, & in an action, &c., authorisg & approvg of the grantg of this psnt lease, do hby at the reqt of the sd C., demise unto the lessee, *pcels*, *habendum to*, the lessee nevless in trust for the sd C., his exs, ads, & assns, *reddendum*, & the lessee doth hby for himself, &c., & as a separate covt the sd C. doth hby for himself, &c., covt with the lessors in mner follg, &c., *saying throughout*, "the lessee or the sd C." *Covts by lessors* with the lessee & also as a separate covt with the sd C. in mner follg, &c., *saying throughout*, "the lessee or the sd C." *Power to* the lessee or the sd C. *to determine the lease at the end of the first —— yrs: Provo for indemnity of lessee by C. as in last form, mutatis mutandis.*

Agreement for a lease by trustees subject to the approval of the Court under the Settled Estates Act or in an action (*b*).

XXIII. *Parties*, A. & B., the trees of the will of K., late of, &c., or, "of an indre of settlemt, dated, &c., & expd, &c.," hinafter called the lessors, wch expression shl include the psons or pson who wd for the time being be entled to rece the rent payable under any lease grted psuant to these psnts, where the context so admits, 1; C., *lessee*, hinafter

(*a*) See note to last form. As to the necessity for the sanction of the Court arising from the lessee being one of the trustees, see 1 White & T. L. C., notes to *Fox* v. *Mackreth*.

(*b*) The necessity for an application to the Court is not likely often to arise in future, having regard to the Settled Land Act, 1882. See p. 772, note.

called the tenant, wch expression, &c., 2. Subjt to the approval of the High Ct of Justice being obtd as hinafter mentd, the lessors agree to grt, & the tenant agrees to take a lease, &c., accdg to the form of lease contd in the schdle hto, or with such varions as may be assented to by both pties, *adding any other usual clauses wch may be appropriate.* An applicon shl forthwith be made by the lessors to the Chancery Divon under the Settled Estates Act, 1877, *or*, "in an action of —— *v.* ——, being an action for the admon of the este of the late X.," for the sanction of the Ct to the sd lease, & in case such sanction cannot be obtd to such lease, eir in the form given in the schdle hto, or with such varions as may be assented to by both pties, on or bfe the —— day of —— next, or within such extended time as shl be agrd to by both pties, then this agrmt shl become void save & except the provons as to costs hinafter contd. The costs of the lessors & tenant as betn solor & client of & incidental to this agrmt & the negotions preliminary thto, & the sd applicon to the Ct (whether the same is grted or not), & the sd lease & counterpt shl be borne by the tenant & the costs of the lessors shl be pd to them or their solor by the tenant on demand. *Schdle.*

Lease, two sureties joining to guarantee rent and performance of covenants.

XXIV. *Parties*, A., *lessor*, hinafter, &c., 1; B., *lessee*, hinafter, &c., 2; C. & D., hinafter called the guarantors, 3: Witneth, in conson, &c., *rent & covts by lessee*, & of the covt by the guarantors hinafter contd, *demise, pcels, habendum, reddendum, covts by lessee, power of re-entry, & covts by lessor.* And the guarantors at the reqt of the lessee & in conson of the lease & grt hinbfe contd, do hby jtly & sevlly covt & guarantee with & to the lessor that the lessee shl at all times duly pay the rents hby reserved in the mner & at the respive times hinbfe apptd for the paymt thof: And also duly pform & observe all the covts on the pt of the lessee & condons hrin contd: And that the guarantors resply, & their respive hrs, exs, or ads, will at all times hrafter, pay & make good to the lessor on demand, all losses, costs, damages, & expses occasd to him by the non-

paymt of the sd rents or any pt thof, or the breach, non-pformce, or non-observce of any of the sd covts & condons on the pt of the lessee: AND FURTHER, that any neglect or forbearce on the pt of the lessor in enforcg or the giving time by him to the lessee for paymt of the sd rents, or any pt thof, or the pformce or observce of any of the sd covts & condons, shl not in anywise rele the guarantors or eir of them, their or eir of their hrs, exs, or ads, in respt of their or his liability under the covt or guarantee on their or his pt hinbfe contd.

XXV.

AGREEMENT *for* YEARLY TENANCY *of a small plot of* LAND *at a* NOMINAL RENT, *so as to* PREVENT *a* TITLE *being* ACQUIRED *under the* STATUTES OF LIMITATION (*a*).

Parties.

Agreement for tenancy.

PARTIES, A., hinafter called the landlord, 1; B., hinafter called the tenant, 2: WHBY it is acknowed & agrd, that the plot of ground situate, &c., now in the occupon of the tenant is & shl continue to be occupied by the tenant & his assns as tenants from yr to yr to the landlord, his hrs & assns, the owners for the time being of the freehd thof, AT A YRLY RENT of one shilling if demanded, payable on the —— day of —— in every yr, SUCH TENANCY to be considered as having commced on the —— day of ——, & TO BE determinable by eir pty at any time, on giving one calr month's written notice to the other pty. IN WITS, &c.

Mode of preventing Statute running.

(*a*) A mere acknowledgment that the piece of land is held under a tenancy at will, is not enough, having regard to 3 & 4 Will. IV., c. 27, s. 7. It should be from year to year, reserving a nominal rent and requiring short notice to determine it, and one payment of rent should be actually made and a receipt taken having regard to the 8th section of the Act, as it might be contended that the demise, though in writing, is not a valid demise within the Statute of Frauds until rent has been accepted under it.

XXVI.

DEED *extending* TERM *of lease by endorsement* (*b*).

PARTIES, A., 1; B., 2: WHAS the residue of the within mentd term of —— yrs is now vested in the sd B., subjt to the paymt of the rent & pformce of the lessee's covts reserved by & contd in the within written lease: AND WHAS the revon in fee expectant on the determinon of the sd term is now vested in the sd A.: AND WHAS the sd A. has agrd with the sd B. to demise to him the within mentd —— & hds for the further term of —— yrs, to commce on the —— day of ——, *i.e.*, *the expiron of existg term*, at the rent & subjt to the covts & provons hinafter reserved & expd: NOW THIS INDRE WITNETH that in conson of the rent hinafter reserved, & the covts by the sd B. hinafter contd, the sd A. doth hby demise unto the sd B., ALL the —— hds & premes comprd in & demised by the within written indre, subjt to the like exceptions & reservons as are thrin contd; *Habendum*, p. 740, from the sd —— day of ——, subjt to & under the like rent & payable at the like times & in like mner as the rent reserved by the within written indre, & subjt to the like covts & agrmts on the pt of the lessee, & the like provon for re-entry in case of non-paymt of rent or breach of covt, or the happeng of any of the other events in the within written indre in that behalf mentd, & with the benefit of the like covts & agrmts on the pt of the lessor, & subjt to & with the like provons & condons in all respts as are in the within written indre contd, in like mner as if all such covts, agrmts, condons, & provons had been hrin repeated, with such modificons only as the differces in the names of the pties & in the term of the lease & other circes may require: AND THE sd A. doth hby for himself, his hrs, exs, ads, & assns, covt with the sd

Recitals.
Residue of term in lessee.
Reversion in lessor.
Agreement.
Witnesseth.
Demise.
Parcels.
Habendum.
Mutual covenant to perform covenants of lease.

(*b*) It is better, whenever the case admits, to grant a fresh lease in possession, on the surrender of the former lease.

B., & the sd B. doth hby for himself, his hrs, exs, ads, & assns, covt with the sd A., that he, the sd respive covtg pty, his hrs, exs, ads, or assns resply, will, during the sd term of —— yrs, pform & observe all such covts, agrmts, & provons as afsd, wch on his or their respive pt are or ought to be pformed & observed: PROVD ALWAYS, & it is hby agrd that if the term of —— yrs grted by the within written indre shl be determined by virtue of the condon or provon for re-entry thrin contd, then these psnts shl become absolutely void. IN WITS, &c.

Proviso for determination by re-entry.

XXVII.

RELEASE *by* LESSORS *of* BREACH *of* COVENANT (*a*).

PARTIES, A. & B., *lessors* (hinafter called the lessors), 1; C. & D., *lessees* (hinafter called the lessees), 2. *Recite lease, referrg to covt to insure.* AND WHAS the premes comprd in the sd lease are now vested in the lessees: AND WHAS it has recently been discovered that by some inadvertce or neglect on the pt of the lessees a breach of the covt contd in the sd lease for, &c., has been committed whby a rt of action & also of re-entry has or may have arisen to the lessors: AND WHAS the lessors have agrd to exte the rele hinafter contd, subjt nevs to the provo hinafter contd. NOW THIS INDRE WITNETH, that in psuance of the sd agrmt the lessors do hby rele & waive all rt & title of action, re-entry & forfeiture, claims & demands whatsr wch they the lessors, or eir of them, now have, or has or might have agst the lessees or any pson or psons claimg under or by virtue of the sd lease for or by reason of any breach, non-observce or non-pformce htofore committed or suffered of the sd covt, or

Recitals.

Witnesseth.

Release.

(*a*) Prior to 22 & 23 Vict. c. 35, s. 1, a defeazance to revive the condition of re-entry would have been necessary.

any other covt or agrmt on the pt of the lessees contd in the sd lease; And also do & each of them doth ratify & confirm the sd lease. PROVD ALWAYS that nothing hinbfe contd shl prejudice or effect any of the rts or remedies of the lessors under the covts & condon of re-entry, & other condons & provons of the sd lease in respt of any future breach of any of the covts or agrmts on the pt of the lessees thrin contd. IN WITS, &c. Proviso.

XXVIII.

DEED *confirming a* FORFEITED LEASE *with a* MODIFICATION *in the covenants and condition of re-entry* (*b*).

PARTIES, A., hinafter called the lessor, wch expression, &c., *see* p. 734, 1; B., hinafter called the lessee, wch expression, &c., 2: *Recite lease from A. to B., containg a covt by the lessee to insure & rebuild. That premes were uninsured, & destron of bldg by fire, & that it had not been rebuilt:* AND WHAS the lessor is advised that a breach of the sd covts for the insce & rebldg of the sd messe has occurred, in respt whof he is entled to recover damages under such respive covts, & to enforce the power of re-entry contd in the sd lease: AND WHAS an arrangemt has been come to betn the lessor & lessee that, in conson of the sum of £—— to be pd by the lessee to the lessor, the lessee shl be dischged from all liability to rebuild the sd messe, & that the sd lease shl be confirmed with such modificons as are hinafter expd: NOW THIS INDRE WITNETH that in psuance of such arrangemt, & in conson of the premes & of the sum of Recitals. Breach of covenant. Agreement. Witnesseth.

(*b*) See note to last Precedent. If the confirming party has only an equitable right to impeach the lease, and no legal estate, a mere confirmation without a formal demise would probably suffice. As to the confirmation of leases, see 12 & 13 Vict. c. 26; 13 Vict. c. 17; and as to limited owners, see the Settled Land Act, 1882, s. 12 (iii.). Mode of confirming leases.

£—— now pd by the lessee to the lessor, *rect*, the lessor doth hby confirm unto the lessee, ALL & SINGR the premes comprd in & expd to be demised by the sd indre of lease : TO HOLD the same UNTO the lessee, for the residue of the sd term of —— yrs, or other the term & intt now vested in him, dischgd from all liability to rebld the sd messe, but subjt to the sd yrly rent of £——, & to the covts & agrmts on the pt of the lessee & condons contd in the sd lease, save & except the covts for the insce, repair, & maintence of the sd premes, & the condon of re-entry on breach of such respive covts, so far as relates to the insce & rebldg of the sd messe. *Covt by lessor for quiet enjoymt by lessee on paymt of rent & pformce of covts of lease*, "as hby modified." AND THE lessor doth hby rele the lessee from the sd covts for the insce & rebldg of the sd messe, & from all rts of action, claims, & demands, wch the lessor now has in respt of any past or existg breach of such covts, but so that the covts, & provo or condon of re-entry for breach of covt, contd in the sd lease, shl in all other respts remain in full force, & unaffected by these psnts. IN WITS, &c.

Confirmation.
Parcels.
Habendum to lessee.
Release by lessor.

XXIX.

CONFIRMATION *by* TENANT IN TAIL *on his coming of age of a* VOIDABLE MINING LEASE *granted by the Tenant for life* (*a*).

PARTIES, A., *tenant for life*, 1; B., *tenant in tail*, 2; C., *lessee*, 3. *Recite will devisg, inter alia*, the lands & hds desed in the indre of lease hinafter recited, & the mines & minls thrin, *to the use of A. for life, remr to his eldest son in tail, & containg a power of leasg mines for twenty-one yrs. Death of testor & proof of his will. Voidable lease grted by*

Recitals.

(*a*) See note to last Precedent.

tenant for life to lessee, setting out the pcels fully, with the powers, liberties, privileges, & easemts thrin expd, & subjt to the exceptions, reservons, & stipulons thrin contd, *set out the habendum fully*, at & under the rents & royalties by the sd indre of lease reserved, & subjt to the covts by the lessee & provons in the same indre contd, & the sd lease contains divers covts on the pt of the lessee & other provons: AND WHAS the sd B. is the eldest son of the sd A., & attned his age of twenty-one yrs on the —— day of ——: AND WHAS the sd B., in the belief that the sd lease is benefl to owners of the hds devised by the sd will lately agrd to confirm the same, *recite disentaily deed under wch hds in lease now stand limd to such uses as A. & B. shl jtly appt.* NOW THIS INDRE, &c., the sd A. & B., in exercise & exon of the power or authority contd in the last recited indre, & of every other power or authority enablg them, do, & each of them doth, hby appt, & also grt, demise & confirm unto the sd C., ALL & SINGR, the coal works, colliery, mines, beds & veins of coal & cannel, pces or pcels of land, rts, liberties, powers, easemts, & appurts, by the sd lease appted or grted, or expd to be appted or grted, except nevs & reservg & subjt to such exceptions, reservons, condons, & restrons, as in such indre of lease are expd: TO HOLD the same premes (subjt as afsd), UNTO the sd C., his exs, ads, & assns, as from the ——— day of ——, *the day of the commencemt of the lease*, for the term of ——— yrs: PAYING thrfor such rents, royalties, & sums of moy as wd have been payable in respt thof under the sd indre of lease, if such lease had been a valid demise during the term thby grted, *covts by C. with A. & also with B., & by A. & B. with C.*, "that all & singr the covts, agrmts, provons, & stipulons in the sd lease contd shl apply & be deemed to apply to the term of ——— yrs hby grted, & to these psnts, & shl be read & construed & have effect in all respts as if the sd lease had constituted a valid demise for the sd term of ——— yrs of the premes hby appted, grted, or demised, & as if the same covts, agrmts, provons, & stipulons had been repeated & contd in these psnts, *Covt*

Tenant in tail of age.

Agreement.

Witnesseth.

Demise.

Parcels.

Habendum to lessee.

Reservation of rent.

by A. & B. agst incumbces, p. 762, *& for quiet enjoymt*, p. 897. In wits, &c.

XXX.

AGREEMENT Supplemental *to a* Building Agreement, *by which the* Lessor *purchases* Improved Ground Rents *before the leases are granted* (*a*).

Parties. AGRMT made the —— day of ——, betn A., of, &c., hinafter called the lessor, of the one pt, & B., of, &c., *builder*, hinafter called the lessee, of the other pt, supplemtal to an agrmt, dated, &c., made betn the same pties,

Recitals. hinafter refd to as the bldg agrmt. Whas it has been agrd that in conson of the immediate paymt by the lessor to the lessee of the sum of ——, the sum of £—— p.a. shl be added to the total amt of the ground rents payable under the sd bldg agrmt in mner hinafter expd, & that the terms of the same agrmt shl be orwise varied as hinafter provd; Now it is hby agrd as follows:—

Agreement for purchase of increased ground rents. 1. In conson of the sum of £—— pd by the lessor to the lessee upon the signature of this agrmt (the rect, &c.) the total rents to be payable by the lessee or his nominees in respt of the land, houses, & premes compd in the sd bldg agrmt shl as from the —— day of ——, be increased by the sum of £—— p.a., makg the total aggregate yrly rent so

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Stamp. (*a*) As to making an agreement supplemental, see p. 3, note. An agreement of this kind has hitherto (it is believed) been treated in practice as requiring only a 6*d*. agreement stamp; but a question has been raised as to whether it does not require an *ad val*. conveyance stamp on the sum paid by the lessor for the purchase of the improved ground rents, either as a transfer on sale under s. 60 of the Stamp Act, 1891, or as a contract for sale under s. 59 of the Act; it would seem, however, to be a mere modification of the original agreement, and if read into that agreement it amounts merely to a reservation to the lessor out of his own property, so as not to subject it to any extra stamp duty.

Notice of the agreement should be endorsed on the original agreement.

payable (inclusive of the rents reserved by the leases for the time being actually grted) as follows (that is to say), from the —— day of ——, to the —— day of ——, the yrly rent or sum of £——, &c., & from the —— day of ——, during the remr of the term of 99 yrs mentd in the sd bldg agreemt, the yrly rent or sum of £——, the sd increased rents to be reserved & made payable at the like times & in like mner as provd by the sd bldg agrmt with respt to the rents thby made payable.

Mode of payment.

2. The increased rents to be payable in respt of the leases remaing to be grted shl be apportioned betn such leases in such mner as shl be approved by the lessor or his surveyor, who shl also (if deemed material) determine what proportion of the rent reserved on each lease, shl be deemed pt of the sd addonal rent of £——.

As to leasing part of land at a nominal rent.

3. The provons of the sd bldg agrmt whby it was provd that when the whole of the ultimate aggregate rent thby reserved shd have been secd, the lessee shd be entled to a lease or leases of the land remaing undemised togr with any house or houses erected thron, at the rent of £——, shl take effect & be applicable when & so soon as the whole of the sd increased ultimate rent of £—— shl have been secd by leases actually grted & not bfe.

Sum paid to lessee to be a charge (*b*).

[4. The sd sum of £—— pd by the lessor to the lessee as afsd shl until the sd total ultimate yrly rent of £—— shl have been secd to the lessor by leases actually grted, be deemed to be in the nature of a loan to the lessee, & shl be a charge on the intt of the lessee, under the sd bldg agrmt as hby modified.]

Building agreement otherwise to remain in force.

5. Except so far as the same is hby modified, & subjt to the modificons hby made, the sd bldg agrmt shl remain in full force, & shl be treated as incorpd with this agrmt so as to operate in like mner as far as may be as if the sd increased rents had been origlly reserved thby.

Declaration

6. And the lessee hby declares that he has not done or

(*b*) *Qu.*: whether this clause would not make the agreement chargeable with a mortgage stamp.

against incumbrances. suffered or been party to anything whby his intt under the bldg agrmt is or can be in any way incumbered, or whby he is prevented from enterg into this psnt agrmt, or from givg a good dischge for the sd sum of £——. In wits, &c.

XXXI.

DEED altering *the* Covenants *of a* Mining Lease, *and giving* New Powers *to the* Lessee, *by endorsement.*

Parties, A., *lessor*, hinafter, &c., 1; B., *lessee*, hinafter, &c., 2. *Mutual covts.*

Additional covenant by lessee. 1. The lessee shl forthwith open & commce workg the —— vein on the lands demised by the within-written indre, & shl continue diligently to work the same.

Additional power to lessee. 2. Notwg the provons within contd it shl be lful for the lessee, so long as he shl diligently work the sd —— vein, to deposit on the sd lands all spoil or rubbish wch may be dug or raised from or wrought on any pt of the sd lands, or on or from any other adjoing mines, quarries, or works of the lessee.

Lease to have effect subject to variations. 3. The within-written indre, & the covts, condons, & provons thrin contd, shl henceforth operate & have effect as if the covts, powers, & provons hrin contd had been embodied thrin, & shl be altered & modified accdly, but shl in all other respts remain in force & unaffected by these psnts. In wits, &c.

XXXII.

SURRENDER *of Term under a* LEASE *to the* REVERSIONER *in fee for life or years.* VARIATION, *where the lease is* RENEWABLE *under the Lessor's Covenant* (*a*).

PARTIES, A., *termor*, 1; B., *reroner*, 2. *Recite lease* [*including covt for renewal*], p. 393, *& devolon of term to A.*, p. 395, *& of reron to B.:* AND WHAS the sd A. has agrd with the sd B. for the surrender to him of the sd premes comprd in the sd recited indre of lease for all the residue Recitals. Agreement.

(*a*) When the surrender is made with a view to the granting of a new lease of the same property to the same lessee, a formal surrender may generally be dispensed with, as the acceptance of a new lease which is inconsistent with the existing lease operates as a surrender by operation of law (*Ive's case*, 5 Rep. 11*b*; see also notes to *Thursby* v. *Plant*, 1 Wms. Saunders, 235; p. 277 in edition of 1871); and it has even been held that the grant, with the consent of lessee, of a new lease to a stranger operates as a surrender (*Davison* v. *Gent*, 1 H. & N. 744); but the mere oral assent of the old tenant is not sufficient unless he gives up possession at or about the time of the grant of the new lease (*Wallis* v. *Hands*, [1893] 2 Ch. 75); see further 37 Sol. J. 539. As to the power of limited owners to accept surrenders and grant new leases, see the Settled Estates Act, 1877, s. 7; and the Settled Land Act, 1882, s. 13; see also s. 31 (iv.); and see the Conv. Act, 1881, s. 42 (2), enabling trustees to accept surrenders on behalf of infant reversioners. As to the surrender of leases vested in infants or femes covert, see 11 Geo. IV. & 1 Wm. IV. c. 65, ss. 12, 14; *Re Griffiths*, 29 Ch. D. 248. The rent should be paid up to the surrender; under the old law, although the remedy for rent accrued due before the surrender was not affected (*A.-G.* v. *Cox*, 3 H. L. 240), rent not actually accrued due was lost (*Grimman* v. *Legge*, 8 B. & C. 324), but this is altered by the Apportionment Act, 1870, if *Swansea Bank* v. *Thomas*, 4 Ex. D. 94, is good law; and see *Re South Kensington Co-operative Stores*, 17 Ch. D. 161. As to surrender of leases.

The surrender of a lease does not affect the rights of under-lessees, whether it is made with a view to a renewal (4 Geo. II., c. 28, s. 6), or otherwise (8 & 9 Vict. c. 106); and although the lease was liable to forfeiture, and if the lessor had re-entered for the forfeiture their rights would have been gone (*G. W. Railway Co.* v. *Smith*, 2 Ch. D. 235).

Recitals in a surrender of a lease would often be unnecessary, and it may generally be conveniently made by endorsement.

now unexpired of the sd term thby grted, in conson of the sum of £—— to be pd by the sd B. to the sd A.: NOW THIS INDRE WITNETH that in psuance, &c., *conson*, *rect*, the sd A., as beneficial owner (*a*), doth hby surrender & assn unto the sd B., his hrs & assns [*or, if B. has only a leasehd intt*, "his exs, ads, & assns," *or, if he have a life este*, "& his assns."] ALL & SINGR the sd hds & premes comprd in or expd to be demised by the sd recited indre of lease. To THE intent that the sd term of —— yrs grted by the sd lease may merge & be absolutely extinguished in the freehd & inhance of, [*or*, in the revon of him the sd B. in] the sd premes: [AND THIS INDRE ALSO WITNETH, that in further psuance of the sd agrmt, & for the conson afsd, the sd A. doth hby rele & dischge the sd B., his hrs, exs, ads, & assns, from the hinbfe recited covt in & by the sd indre of lease made & entd into as afsd for the renewal of the sd lease, & from all actions, pcdgs, claims, & demands under the sd covt, or any other covt or provon in the sd indre of lease contd.] IN WITS, &c.

Witnesseth.

Surrender.

Term to merge.

Release of lessor's covenant to renew.

XXXIII.

SURRENDER *of a* PORTION *of the land* (*b*) *comprised in a* FARMING LEASE *to a* MORTGAGEE *in fee, and* ABATEMENT *of* RENT *in respect thereof* (*by endorsement on the lease*).

PARTIES, A., *lessee*, 1; B., *mtgor*, 2; C., *mtgee*, 3; WHAS the sd A. has, at the reqt of the sd B., agrd to surrender to

Parties.

Recital of agreement.

(*a*) This implies full covenants for title, see p. 438, note. If A. is a trustee or mortgagee he will surrender "*as trustee*" or "*mortgagee*," which will imply a covenant against incumbrances, see *ib.*

(*b*) As to the effect of a surrender of part of the premises in a lease, see the Conv. Act, 1881, s. 12; and *Baynton* v. *Morgan*, 22 Q. B. D. 74, above, p. 571, note.

the sd C., as mtgee of & the pson legally seised of the fee simple & inhance of the premes demised by the within-written indre in revon expectant on the term thby grted, such portions of the land & premes thrin comprd as are hinafter descd & surrendered, upon being pd the sum of £—— wch the sd A. has agrd to accept in full satisfon of all claims whatsr wch as an outgoing tenant accdg to any of the provons contd in the sd lease or by the custom of the country, or the Agricultural Holdings (England) Act, 1883, or orwise the sd A. has or could have or claim in respt of the sd premes hby surrendered, AND it has also been agrd that the rent of £—— p.a. reserved by the within written indre shl be abated as hinafter expd. NOW THIS INDRE WITNETH, that in psuance of the sd agrmt & in conson of the sum of £——, now pd by the sd B. to the sd A., the rect, &c., & of the abatemt hinafter made in the sd rent, the sd A., as beneft owner, at the reqt of the sd B., doth hby surrender & assn unto the sd C., his hrs & assns, all those pces of land, &c., formg pt of the lands & premes comprd in & demised by the within written indre, TO THE intent that the residue now unexpired of the term of —— yrs thby grted may merge & be extinguished in the freehd & inhance of the sd premes hby surrendered, & that the same premes may be dischged from all the provons of the within written indre. AND it is hby agrd & decld that in conson of the surrender hinbfe contd, & of the premes, the sd yrly rent of £—— reserved by the within written indre shl as from the —— day of ——, be abated or reduced by the sum of £—— p.a. (being at the rate of £—— per acre for the sd premes hby surrendered), & that accdly as from that date the yrly rent of £—— shl be payable in respt of the pces of land & premes remaing subjt to the within written indre at the like times & in like mner as the sd yrly rent of £—— is thby made payable; AND it is hby further agrd & decld that as from the sd —— day of ——, all the covts on the pt of the lessee, & the power or condon of re-entry, & the covts on the pt of the

Witnesseth.

Surrender.

Term to merge.

Provision for abatement of rent.

Covenants, &c., of lease to remain in

force as to remaining premises. lessor, & all other powers, condons, & provons in the within written indre, shl remain in force with respt to the sd pces of land & premes remaing subjt to such indre as far as the same covts, powers, condons, & provons resply may be applicable thto, with such modificons as may be rendered necy by such redon or abatemt of the sd rent as afsd, & the other circes of the case. In wits, &c.

XXXIV.

SURRENDER *by endorsement of lease where the* Reversion *is in* Settlement *and subject as to different* Parts *to various* Mortgages.

Recitals *Parties, lessees,* 1; *sevl sets of mtges,* 2, 3, *&* 4; *tenant for life of equity of redmon,* 5. *Recitals showg shortly state of title to revon.* And whas it has been agrd that with a view to the grtg of a new lease of pt of the premes comprd in the within written indre the lessees shl make & exte such surrender as is hinafter contd. NOW THIS INDRE WITNETH that in psuance, &c., & in conson of the premes & of the determinon hby made of the covts by the lessees in the within written indre contd, the lessees as benefl owners do resply hby surrender & yield up to the sevl other pties hto accdg to their respive estes & intts in revon as hinbfe mentd. All & singr the freehd, copyhd, & leasehd hds & premes comprd in & demised by the within written indre or now held by the lessees thrunder, subjt to the subtenancies created by the lessees, To the intent that the residue now unexpired of the term of yrs subsistg under or by virtue of the within written indre in the sd respive premes hby surrendered, may merge & be extinguished in the revon immedly expectant on the same term of yrs of & in the same premes resply, & that the within written indre & all the covts & provons thrin contd may be hby determined. In wits, &c.

Witnesseth.

Surrender.

Term to merge.

XXXV.

SURRENDER *by* LESSEE *and his* MORTGAGEES *by endorsement on the Lease, with a view to the granting of a* NEW LEASE *of* PART *of the land* (*a*).

Parties, A., *lessee*, 1; B., C., & D., *mtgees*, 2; E., *lessor*, 3: WHAS since the date of the within written indre of lease certn bldgs, fences, & other erons have been built & set up on the sd pce of ground thby demised & other alterons & addons have been made by the sd A. in & to the sd premes, NOW THIS INDRE WITNETH, that in conson of a new lease intd to be grted of a pt of the sd premes as hinafter mentd, the sd B., C., & D., **as mtgees**, at the reqt of the sd A. do hby surrender & assn, & the sd A., **as benefl owner**, doth hby surrender, assn, & confirm unto the sd E., his hrs & assns, all the sd pce of ground & other the premes mentd & comprd in the within written indre, togr with all the bldgs, erons, & addons since erected or set up thron or added thto, To THE intent that the term of —— yrs grted by the sd indre of lease may be merged & extinguished in the frechd & inhance of the sd premes, & to the further intent that a new lease may be grted by the sd E. to the sd A. of a pt of the sd pce of ground & premes with the bldgs & erons thron. IN WITS, &c.

Parties.

Recitals as to alterations in premises.

Witnesseth.

Surrender.

New lease to be granted.

(*a*) As to surrenders of renewable leases, see 4 Geo. II. c. 28, s. 6.

LICENSES (*a*).

I.

LICENSE *not under seal by Lessors to* LESSEE *to* ASSIGN, UNDERLET, *or* MORTGAGE (*b*).

WE, the undersigned, being the psnt landlords of the ppty hinafter mentd, do hby consent to an assnmt *or*, "underlease," [by way of mtge] by A., of, &c., the psnt tenant of the sd ppty under the lease hinafter mentd, to B., of, &c., [for the term of —— yrs from ——, *or*, "for the whole remaing term except the last day thof,"] of, [*pcels shortly descd*, being pt of], the hds & ppty comprd in an indre of lease dated, &c., & made betn, &c., & thby demised to K., for the term of —— yrs, from ——, PROVD that this consent shl not authorise any further or other assnmt, [*or*, "underlettg or partg wholly or partially with the posson of"] the sd premes or any pt thof, or prejudice or affect any of the covts, condons, or provons in the sd lease

(*a*) See also AGREEMENTS, and LEASES (Mining). A license, if under seal, is subject to a deed stamp of 10s.; but if under hand only is exempt, unless amounting to an agreement.

Effect of license to lessee.

(*b*) A license does not affect the lessor's rights as to future breaches of covenant or destroy the power of re-entry, see 22 & 23 Vict. c. 35, ss. 1, 2; 23 & 24 Vict. c. 38, s. 6; a defeasance for reviving the condition of re-entry is therefore unnecessary, Elph. Introd. Conv., p. 217. A license to underlet does not, unless so provided, preclude the underlessee from underletting (*Williamson* v. *Williamson*, 9 Ch. 729). As to licenses to assign or underlet, see 5 Dav. Prec., pt. 1, p. 193, note. By the Conv. Act, 1892, 55 & 56 Vict. c. 13, s. 3, no fine is to be exacted from the lessee for a license to assign, &c., unless otherwise provided by the lease.

contd, except to the extent hinbfe expd. As wits our hands this —— day of ——.

Signed by the Lessors.

WITS,

II.

LICENSE *under Seal by Lessors to* LESSEE *to make* ALTERATIONS *in* BUILDINGS (*c*).

THIS INDRE, &c., *ptics*; A., B., & C., *lessors* (hinafter called the landlords), 1; D., *lessee* (hinafter called the lessee), 2. *Recite lease to K.*, & in the sd lease is contd a covt on the pt of the sd C., not to erect any bldg nor increase the height of any eron, or bldg in the yard or garden of the sd demised premes, nor cut, injure, or alter any of the ppal walls or timbers of, nor make any alteron in the thby demised premes witht having first obtd the license & consent in writg of the lessors. AND WHAS the sd premes have become legally vested in the lessee for the remr of the sd term of 21 yrs, subjt to the rent & covts of the sd lease: AND WHAS the revon in fee of the sd premes expectant on the determinon of the sd term is now vested in the landlords: AND WHAS the lessee is desirous of opening a doorway in the pty wall at the rear of the sd premes demised by the sd lease, & of formg a communicon betn the same & the adjoing messe now in his occupon, & of makg & executg certn other works & alterons in the sd demised premes accdg to a plan & specificon prepared by him, & he has accdly applied to & reqted the landlords to grt him their license for those pposes, & such applicon & the sd plan & specificon having been submitted to their surveyor & approved by him, the landlords have agrd to grt such license subjt as hinafter mentd, & the lessee in conson thof has agrd to

Recitals.

Lease containing covenant not to alter buildings.

Present owners of lease,

and reversion.

Application by lessee for license to make alterations in buildings.

(*c*) See note to last Precedent.

Witnesseth.

enter into the covts hinafter contd: NOW THIS INDRE WITNETH, that in conson of the premes & of the covts hinafter contd on the pt of the lessee, the landlords do hby give & grt unto the lessee, his exs, ads, & assns, their full license & permission to make the sd doorway in & through the pty wall of the sd demised premes, & to form a communicon betn the same & the sd messe now in the occupon of the lessee, & also to make & exte the other works & alterons hinbfe refd to, & wch are parlarly delineated & descd in the sd plan & specificon, provd the same be done within the period of three calr months from the date hrof, & under the superintendce & to the satisfon of the surveyor for the time being of the landlords, their hrs or assns: AND THIS INDRE ALSO WITNETH that in conson of the license hinbfe given, the lessee doth hby covt with the landlords, their hrs & assns, THAT he, the lessee, his exs, ads, or assns will, within the sd period of three calr months from the date hrof, make the sd doorway & communicon, & exte the other works & alterons afsd in a good & substantial mner with pper materials under the superintendce & to the satisfon of the surveyor for the time being of the landlords, their hrs or assns, AND WILL bfe makg such alterons, communicate the parlars thof to the directors of the —— Insce Co, in wch office the sd demised premes are insured agst fire, & obtain the consent of the sd directors to the sd alterons, AND THAT when such doorway & communicon & other works & alterons shl have been completed, all the restrictive & other covts on the pt of the sd K., & provons contd in the sd indre of lease, shl be applicable to the sd thby demised premes in their then altered state in the same mner & as fully & extensively as if such premes had continued in the same state as the same are at psnt, AND THAT the lessee, his exs, ads, or assns will, at the end or other sooner determinon of the hinbfe recited lease or whenever thrunto required by the landlords, their hrs or assns, at the costs of him the lessee, his exs, ads, or assns, well & substantially brick up the opening made in the sd

Grant of license to make specified alterations.

Covenants by lessee.

To make specified alterations within a certain time.

To obtain sanction of insurance office to alterations.

Covenants of lease to apply to the buildings as altered.

To restore party-wall to original state.

pty wall & restore the same in such mner as the surveyor for the time being of the landlords, their hrs or assns, shl direct, & to his or their complete satisfon. In wits, &c.

III.

LICENSE, *under Seal, by Lessor to* Lessee *to* Continue *Alterations made in Buildings in* Breach *of the* Covenants *of the Lease* (*a*).

THIS INDRE, &c., *pties*, A., *lessor*, hinafter called the landlord, 1; B., *lessee*, hinafter called the tenant, 2: *Recite lease to K., & that lease is vested in B., & revon in A., as in last form:* And whas the tenant has recently made alterons in the sd premes, *specify nature of alterons:* And whas the alterons so made by the tenant in the sd premes, are considered to be wholly or to some extent an infringemt of, or unauthorised by the covts & provons in the sd indre of lease contd: And whas the landlord has agrd in conson of the paymt to him by the tenant of the sum of £——, to waive his rts in respt of any breach of the covts of the sd lease so committed by the tenant, & to grt to him such license to continue such alterons, & orwise, as is hinafter contd, subjt as hinafter mentd: NOW THIS INDRE WITNETH that in psuance of the sd agrmt & in conson of the sum of £—— now pd by the tenant to the landlord, *rect*, the landlord doth hby (so far as he is affected by or concerned in the same) give & grt unto the tenant, his exs, ads, & assns, full liberty & license to continue & maintain durg the residue of the sd term of —— yrs the sevl alterons made by him in

Recitals. Lease. That lessee has made alterations in breach of covenants. Agreement by lessor to grant license for alterations. Witnesseth. Lessor grants license,

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(*a*) See note to Precedent I. Probably this need not be under seal. By the Conv. Act, 1892, 55 & 56 Vict. c. 13, s. 2 (1), the waiver of the right of re-entry for breach of covenant is not to affect the lessor's right to recover expenses incurred in reference to the breach. As to waiver of right of re-entry.

and waives damages and re-entry in respect of alterations.

the sd demised premes as hinbfe mentd: And doth hby waive & rele all claim to damage or rt of re-entry upon the sd demised premes, & other rts wch may have accrued to him, the landlord, by reason of any breach of any of the covts or condons of the sd lease committed by the tenant in respt of any of the alterons or mres hinbfe mentd. Provd always & it is hby agrd & decld, that the license & waiver hinbfe contd shl extend only to the specific alterons & mres hinbfe expressly mentd, & shl not be deemed to authorise any further or other alterons in the sd premes, or to operate as a waiver or rele of the covts or condons of the sd lease further or orwise, And that the sd lease & the covts on the pt of the lessee thrin contd for keepg the sd premes in repair & restrictive of the rt to make alterons thrin, & all other the covts & condons thrin contd, shl henceforth be construed & operate & take effect in all respts in like mner as if the alterons afsd had been made in the sd demised premes previously to the date of the sd lease. In wits, &c.

Proviso that license shall apply only to specific alterations.

That lease shall extend to alterations.

IV.

LICENSE *by tenant for* Life (*a*) *to* Lessee *to keep a public-house in* Consideration *of lessee being* Restricted *from* Assigning, *&c., without license, and* Defeazance *extending* Condition *of re-entry* (Endorsed *on the lease and counterpart*).

Parties.

Parties, A., *equitable tenant for life*, hinafter called the landlord, wch expression shl be deemed to include his

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Power of tenant for life to give license or waive forfeiture.

(*a*) Although there is a remarkable absence of authority or dicta on the subject in the books, the power of a tenant for life or of trustees or other limited owners to grant a license to do any act for which it is required by the lease, or to waive a forfeiture for breach of covenant by accepting rent or otherwise, cannot be questioned, such a power being a necessary incident of ordinary management.

succors in title where the context so admits, 1; B., hinafter called the lessee, wch expression shl be deemed to include his exs, ads, & assns, where the context so admits, 2. WHAS the revon of the premes comprd in & demised by the within-written indre expectant on the term thby grted is now vested in the landlord as equitable tenant for life under the will of, &c. AND WHAS the lessee has applied to the landlord for his license to him, the lessee, to carry on the business of a licensed victualler or publican on the sd demised premes, wch license the landlord has agrd to give to him for a term of —— yrs as hinafter mentd on condon that the lessee shl henceforth be restricted from assning or underlettg the sd demised premes witht licēnse in mner hinafter expd: NOW THIS INDRE WITNETH that in conson of the covt & grt on the pt of the lessee & provons hinafter contd, & of the premes, the landlord doth hby give & grt unto the lessee full license & permission to use the premes comprd in & demised by the within-written indre for the pposes of the business of a licensed victualler or publican for a term of —— yrs from the date of these psnts, but so that the sd demised premes shl not after the expiron of such term be used for any such ppose witht a further license for that ppose & so that in the event of any breach by the lessee of the covt agst assning or underlettg witht license hinafter contd, the license hinbfe contd shl thrupon cease & be forfeited: AND THIS INDRE ALSO WITNETH that in conson of the license hinbfe contd & of the premes the lessee doth hby covt with the landlord & also as a separate covt with C. & D., the psnt trees of the sd will, their hrs & assns, that the lessee shl not at any time hrafter make any assnmt or underlease or pt with the posson of the sd demised premes or any pt thof witht the license & consent in writg of the landlord first had & obtd, & doth hby further covt with & grt unto the landlord & also separately with & to the sd trees, their hrs & assns, that the provo or condon of re-entry by the within-written indre given or reserved to the landlord in the event of the rent thby reserved being in

Recitals.

Title to reversion.

Agreement.

Witnesseth.

License.

Covenant not to assign, &c.

Defeazance.

arrear as thby mentd or in the event of any breach of any of the covts on the pt of the lessee thrin contd shl henceforth be enlarged & extended so as to operate & be exerciseable henceforth in the same or the like mner as if the covt on the pt of the lessee hinbfe contd agst assning or underlettg witht license as afsd had been contd in the within-written indre to the intent that such provo or condon of re-entry shl apply to the event of the breach of such last-mentd covt as well as the other events afsd, & to the intent that the within-written indre & the demise thby made shl henceforth be defeasible accdly, PROVD always that nothing hrin contd shl in anywise prejudice or affect the sd provo or condon of re-entry except by way of enlargemt or extension thof as afsd, AND the lessee doth hby further covt with the landlord & also with the sd trees that he the lessee hath not at any time done or been pty or privy to anything whby the sd demised premes or his intt thrin, are, is, or may be, in any mner incumbered or affected or whby he is prevented from enterg into or making such covt, grt, or defeasce as is hinbfe contd, AND the landlord doth hby covt with the lessee that he, paying the rent reserved by the within-written indre & pformg & observg the covts & agrmts thrin & hrin contd, may, &c., *for quiet enjoymt*, p. 762. IN WITS, &c.

Proviso.

Covenant against incumbrances.

V.

LICENSE *by tenant for* LIFE *to* OWNER *in fee of adjoining land to* BUILD *on and* USE *a plot of ground contrary to* RESTRICTIVE COVENANTS (*a*).

Parties.

Recitals.

PARTIES, A., *tenant for life*, 1; B., *owner in fee of adjoing land*, 2. *Recite convce by X., A.'s predecessor in title to Y.*,

---

As to release of restrictive covenants.

(*a*) As to restrictive covenants, see p. 311, note; and as to the power to release or waive such covenants, see p. 313, note. In case of a doubt as to whether a tenant for life has power so to do, so as to bind the remain-

B.'s predecessor in title, of land subjt to restrictive covts, setty out those wch are to be modified: AND WHAS the sd A. is now, under the will of the sd X., tenant for life in posson of the este, late of the sd X., adjoing the land comprd in the sd convce to the sd Y.: AND WHAS by an indre, &c., the land comprd in the sd convce to the sd Y., was conveyed to & is now vested in the sd B. in fee simple: AND WHAS the sd B. has reqted the sd A. to permit the eron & maintce of bldgs, &c., &c., upon the plot of ground hinafter mentd formg pt of the last-mentd land, & the user of such plot & the bldgs thron as & for, &c., AND WHAS the sd A. has consented to grt such licence on the condons & subjt to the restrons hinafter contd: NOW THIS INDRE WITNETH that in conson of the agrmt on the pt of the sd B. hinafter contd, the sd A. as such tenant for life as afsd (but not so as to imply any covt or warranty except as to his own acts) doth hby grt unto the sd B., his hrs & assns, FULL licence & permission to erect & for ever hrafter to maintain & continue upon the plot of ground situate, &c., containg, &c., delineated & edged red upon the plan drawn in the margin of these psnts, a messe & bldgs, &c., &c. And also full licence & permission for ever hrafter to use the sd plot of ground & the messe & bldgs to be erected thron as afsd as & for, &c., *premes not to be used so as to cause nuisce, &c.* (*b*), *see* p. 320, but for no other ppose whatsr, Upon condon nevs, &c., &c., PROVD ALWAYS, &c., that except so far as the same is hby varied the sd indre of convce of, &c., & the restrictive covts & provons thrin contd shl remain in full force & effect. IN WITS, &c.

Title of parties.

Agreement.

Witnesseth.

Licence.

Proviso.

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derman, words excluding any possible implication of a covenant or warranty are inserted. This precedent takes the form of a licence instead of a release, as it is subject to conditions.

(*b*) See *White* v. *Jameson*, 18 Eq. 303.

VI.

LICENCE *by* LORD *of* MANOR *to Copyholder to make a* DEMISE *for Twenty-one years.*

Manor of ——, in the Coy of ——. } To B., of, &c., *copyholder.*

I, A., of, &c., lord of the manor of ——, in the coy of ——, do hby give you licence to demise [——, being pt of] the copyhd messe, farm, & hds, known as ——, situate at, &c., to wch you were admitted tenant at the will of the lord, accdg to the custom of the sd manor, out of Ct on the —— day of ——, to K., of, &c., his exs, ads, & assns, for a term of 21 yrs to be computed from ——. As WITS my hand this —— day of ——.

VII.

LICENCE *by Trustees of a strict* SETTLEMENT *of a* MANOR *to Copyholder to* DEMISE *for Ninety-nine years, with* PROVISO *Fixing the Annual* SUM *upon which the* FINES *are to be Assessed during the Term* (*a*).

Manor of ——, in the Coy of ——. } WE, A., of, &c., & B., of, &c., the trees of the manor of ——, in the coy of ——, do hby by virtue of a power vested in us by an indre dated, &c., & of every or any other power in this behalf us enablg, grt licence to C. of, &c., one of the copyhd tenants of the sd manor, to demise the copyhd

Power of tenants for life to grant licences to copyholders.

(*a*) Under the Settled Land Act, 1882, s. 14, a tenant for life or other limited owner (see s. 58) may now grant such a licence as this, which must be entered on the Court rolls (s. 14 (3)); and see also the Settled Estates Act, 1877, s. 9.

tenemt known as ——, to wch he, the sd C., was admitted tenant at the will of the lord, accdg to the custom of the sd manor, at a ct holden on the —— day of ——, to K., of, &c., his exs, ads, & assns, for bldg pposes, for the term of 99 yrs from the —— day of —— next, so that durg the same term the sum of £—— shl be considered as the annl value for assessg the fines payable to the lord of the manor upon the admission of any new tenant to the sd tenemt, And so that this licence shl be entered on the Ct Rolls of the sd manor within six calr months from the date hrof, orwise the same shl be void, reservg, nevs, unto the lord all fines, heriots, rents, customs & services, due & to grow due in respt of the sd tenemt. As witr our hands this —— day of ——.

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